

MONTANA LEGISLATIVE HISTORY

Chapter 467 19 97

Bill H _____ S 350 Original bill & history ✓ c

H. Committee on Business & Labor

Hearing Date(s) Mar 25 ✓ c

Mar 28 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on Labor & Employment Relations

Hearing Date(s) Feb 18 ✓ c

Feb 20 ✓ c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

SB 348 INTRODUCED BY GLASER LC0726 DRAFTER: MCCLURE

REQUIRE ONE-STOP LICENSING FOR BUSINESS AND PROFESSIONAL
LICENSES

2/13 INTRODUCED
 2/13 FIRST READING
 2/13 REFERRED TO BUSINESS & INDUSTRY
 2/13 FISCAL NOTE REQUESTED
 2/18 HEARING
 2/19 TABLED IN COMMITTEE
 2/20 FISCAL NOTE RECEIVED
 2/20 FISCAL NOTE PRINTED
 3/03 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
 DIED IN COMMITTEE

SB 349 INTRODUCED BY KEATING, ET AL. LC0746 DRAFTER: MCCLURE

REVISE THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF
THE DEPARTMENT OF LABOR AND INDUSTRY

2/13 INTRODUCED
 2/13 FIRST READING
 2/13 REFERRED TO LABOR & EMPLOYMENT RELATIONS
 2/13 FISCAL NOTE REQUESTED
 2/18 HEARING
 2/18 FISCAL NOTE RECEIVED
 2/18 FISCAL NOTE PRINTED
 2/21 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/24 2ND READING PASSED 50 0
 2/25 3RD READING PASSED 50 0
 TRANSMITTED TO HOUSE
 3/03 FIRST READING
 3/03 REFERRED TO BUSINESS & LABOR
 3/24 HEARING
 3/25 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 4/03 2ND READING CONCURRED 95 3
 4/04 3RD READING CONCURRED 96 3
 RETURNED TO SENATE WITH AMENDMENTS
 4/08 2ND READING AMENDMENTS CONCURRED 50 0
 4/09 3RD READING CONCURRED AS AMENDED 50 0
 4/14 SIGNED BY PRESIDENT
 4/15 SIGNED BY SPEAKER
 4/15 TRANSMITTED TO GOVERNOR
 4/17 SIGNED BY GOVERNOR
 CHAPTER NUMBER 310
 EFFECTIVE DATE: 07/01/97

SB 350 INTRODUCED BY MCNUTT, ET AL. LC1120 DRAFTER: LANE

REVISE THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS

2/13 INTRODUCED
 2/13 FIRST READING
 2/13 REFERRED TO LABOR & EMPLOYMENT RELATIONS
 2/13 FISCAL NOTE REQUESTED
 2/18 HEARING
 2/18 FISCAL NOTE RECEIVED
 2/18 FISCAL NOTE PRINTED
 2/21 COMMITTEE REPORT—BILL PASSED
 2/24 2ND READING PASSED 34 16
 2/25 3RD READING PASSED 33 17

	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & LABOR		
3/25	HEARING		
4/03	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	63	36
4/04	REVISED FISCAL NOTE REQUESTED		
4/05	3RD READING CONCURRED	64	36
	RETURNED TO SENATE WITH AMENDMENTS		
4/08	REVISED FISCAL NOTE RECEIVED		
4/08	REVISED FISCAL NOTE PRINTED		
4/11	2ND READING AMENDMENTS CONCURRED	50	0
4/12	3RD READING CONCURRED AS AMENDED	36	13
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 467		
	EFFECTIVE DATE: 07/01/97		

SB 351 INTRODUCED BY DEVLIN *LC0560 DRAFTER: STERNBERG*

REQUIRE THAT BENEFIT PAYMENTS TO LANDOWNERS PARTICIPATING IN THE HUNTING ACCESS ENHANCEMENT PROGRAM BE PRORATED BETWEEN AFFECTED LANDOWNERS WHEN A HUNTER IS GRANTED ACCESS BY MORE THAN ONE PARTICIPATING LANDOWNER IN A SINGLE DAY

2/13	INTRODUCED
2/13	FIRST READING
2/13	REFERRED TO FISH & GAME
2/13	FISCAL NOTE REQUESTED
2/18	FISCAL NOTE RECEIVED
2/18	FISCAL NOTE PRINTED
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
	DIED IN COMMITTEE

SB 352 INTRODUCED BY DEVLIN *LC0561 DRAFTER: STERNBERG*

REQUIRE THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS POST LANDS CONTRACTED UNDER THE HUNTING ACCESS ENHANCEMENT PROGRAM AND PROVIDE MAPS OF LANDS IN THE PROGRAM TO PARTICIPATING LANDOWNERS FOR DISTRIBUTION TO HUNTERS

2/13	INTRODUCED
2/13	FIRST READING
2/13	REFERRED TO FISH & GAME
2/13	FISCAL NOTE REQUESTED
2/18	FISCAL NOTE RECEIVED
2/18	FISCAL NOTE PRINTED
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
	DIED IN COMMITTEE

SB 353 INTRODUCED BY GAGE *LC1270 DRAFTER: MCCLURE*

AUTHORIZE A STATE AGENCY TO ELECT WORKERS' COMPENSATION COVERAGE UNDER PLAN NO. 1, PLAN NO. 2, OR PLAN NO. 3

2/14	INTRODUCED
2/14	FIRST READING
2/14	REFERRED TO LABOR & EMPLOYMENT RELATIONS
2/14	FISCAL NOTE REQUESTED
2/18	HEARING

LC1120.01

Senate BILL NO. 350

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS, PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN STAFF; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE COMMISSION

OR OF LABOR; PROVIDING THAT COMMISSION STAFF MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE COMMISSION TO ADOPT THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE AS PART OF ITS PROCEDURAL RULES; REQUIRING A PATTERN OR PRACTICE THAT SHOWS A CONSCIOUS AND INTENTIONAL DISREGARD FOR THE PROHIBITION AGAINST DISCRIMINATION IN HOUSING ADVERTISEMENTS BEFORE A VIOLATION OCCURS; PROVIDING THAT THE COMMISSION MAY NOT APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT; REQUIRING COMMISSION STAFF TO INFORM A POTENTIAL RESPONDENT WITHIN 1 WORKING DAY AFTER RECEIPT OF A COMPLAINT; PREVENTING THE COMMISSION FROM REQUESTING A CHANGE OF VENUE IN A CONTESTED CASE HEARING; PROHIBITING COMMISSION STAFF FROM PETITIONING A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE COMMISSION FROM DENYING REMOVAL OF A CASE TO DISTRICT COURT; ALLOWING A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; REQUIRING A CASE REMOVED TO DISTRICT COURT TO BE HEARD DE NOVO; REVISING PENALTY PROVISIONS; PROVIDING THAT A PERSON MAY AVOID SELF-INCRIMINATION IN DISCRIMINATION CASES; AMENDING SECTIONS 2-15-1706, 49-2-203, 49-2-204, 49-2-305, 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, 49-2-509, 49-2-510, AND 49-2-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** It is the intent of the legislature that the commission sit in independent judgment of complaints of alleged discrimination in Montana and that the commission staff operate under the direction and control of the commissioner of labor. The staff is not independent of the

1 commissioner. It is the intent of the legislature that the commission and the commission staff not favor
2 or assist, directly or indirectly, complainants or respondents with procedural or substantive matters of
3 discrimination in Montana. The commission shall maintain the highest standards of objectivity and
4 impartiality when judging cases asserting alleged discrimination in Montana.

5
6 **Section 2.** Section 2-15-1706, MCA, is amended to read:

7 **"2-15-1706. Commission for human rights -- allocation -- quasi-judicial.** (1) There is a commission
8 for human rights.

9 (2) The commission consists of five members appointed by the governor with the consent of the
10 senate.

11 (3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its
12 members ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124.

13 (4) The commission is allocated to the department of labor and industry for administrative purposes
14 only as provided in 2-15-121, ~~except that the commission may hire its own personnel, may seek and~~
15 ~~receive private and federal funds in its own name, and may determine all matters of policy concerning the~~
16 ~~use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section."~~

17
18 **Section 3.** Section 49-2-203, MCA, is amended to read:

19 **"49-2-203. Subpoena power.** (1) The commission may subpoena witnesses, take the testimony
20 of any person under oath, administer oaths, and, in connection therewith, require the production for
21 examination of books, papers, or other tangible evidence relating to a matter either under investigation by
22 ~~the commission staff or in question before the commission. The commission may delegate the foregoing~~
23 ~~powers to a person within the staff for the purpose of investigating a complaint.~~

24 (2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the
25 Montana Administrative Procedure Act."

26
27 **Section 4.** Section 49-2-204, MCA, is amended to read:

28 **"49-2-204. Commission to adopt rules.** The commission shall adopt procedural and substantive
29 rules necessary to implement this chapter. Rulemaking procedures ~~shall~~ must comply with the requirements
30 of the Montana Administrative Procedure Act. At a minimum, the commission shall adopt as part of its

1 procedural rules the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission
2 may adopt a portion of the Montana Code of Criminal Procedure, as it considers appropriate."

3
4 **Section 5.** Section 49-2-305, MCA, is amended to read:

5 **"49-2-305. Discrimination in housing -- exemptions.** (1) It is an unlawful discriminatory practice
6 for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or
7 improved or unimproved property or for any other person:

8 (a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of
9 sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national
10 origin;

11 (b) to discriminate against a person because of sex, marital status, race, creed, religion, age,
12 familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating
13 to the use, sale, lease, or rental of the housing accommodation or property;

14 (c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical
15 or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing
16 accommodation or property for the purpose of discriminating on the basis of sex, marital status, race,
17 creed, religion, age, familial status, physical or mental disability, color, or national origin;

18 (d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing
19 accommodation or property because of sex, marital status, race, creed, religion, age, familial status,
20 physical or mental disability, color, or national origin;

21 (e) to represent to a person that a housing accommodation or property is not available for
22 inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial
23 status, physical or mental disability, color, or national origin when the housing accommodation or property
24 is in fact available; or

25 (f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or
26 property by representations regarding the entry or prospective entry into the neighborhood of a person or
27 persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental
28 disability, color, or national origin.

29 (2) The rental of sleeping rooms in a private residence designed for single-family occupancy in
30 which the owner also resides is excluded from the provisions of subsection (1), ~~provided that~~ if the owner

1 rents no more than three sleeping rooms within the residence.

2 (3) (a) ~~It~~ Except as provided in subsection (3)(b), it is an unlawful discriminatory practice to make,
3 print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that
4 indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention
5 to make or have a prohibited preference, limitation, or discrimination.

6 (b) If the printing or publication of the notice, statement, or advertisement was by a person
7 regularly engaged in the business of publishing classified housing notices, statements, or advertisements,
8 subsection (3)(a) is not violated unless it is shown that the printing or publication of the notice, statement,
9 or advertisement is part of a pattern or practice of printing or publishing notices, statements, or
10 advertisements in violation of subsection (3)(a) that demonstrates a conscious and intentional disregard for
11 the provisions of subsections (1) and (3)(a).

12 (4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or
13 mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing
14 accommodation or property after it is sold, leased, rented, or made available; or any person associated with
15 that buyer, lessee, or renter:

16 (a) in the sale, rental, or availability of the housing accommodation or property;

17 (b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or
18 property; or

19 (c) in the provision of services or facilities in connection with the housing accommodation or
20 property.

21 (5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability
22 includes:

23 (a) refusal to permit, at the expense of the person with a disability, reasonable modifications of
24 existing premises occupied or to be occupied by the person with a disability if the modifications may be
25 necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental,
26 the landlord may, ~~where~~ when it is reasonable to do so, condition permission for a modification on the
27 lessor's or renter's agreement to restore the interior of the premises to the condition that existed before
28 the modification, except for reasonable wear and tear;

29 (b) refusal to make reasonable accommodations in rules, policies, practices, or services when the
30 accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing

1 accommodation or property; or

2 (c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction
3 of a covered multifamily housing accommodation, a failure to design and construct the housing
4 accommodation in a manner that:

5 (A) provides at least one accessible building entrance on an accessible route;

6 (B) makes the public use and common use portions of the housing accommodation readily
7 accessible to and usable by a person with a disability;

8 (C) provides that all doors designed to allow passage into and within all premises within the
9 housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a
10 wheelchair; and

11 (D) ensures that all premises within the housing accommodation contain the following features of
12 adaptive design:

13 (I) an accessible route into and through the housing accommodation;

14 (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible
15 locations;

16 (III) reinforcements in bathroom walls to allow later installation of grab bars; and

17 (IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver
18 about the space;

19 (ii) a covered multifamily housing accommodation that does not have at least one building entrance
20 on an accessible route because it is impractical to do so ~~due to~~ because of the terrain or unusual
21 characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

22 (6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

23 (a) a building consisting of four or more dwelling units if the building has one or more elevators;
24 and

25 (b) ground floor units in a building consisting of four or more dwelling units.

26 (7) (a) It is an unlawful discriminatory practice for any person or other entity whose business
27 includes engaging in residential real estate-related transactions to discriminate because of sex, marital
28 status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin
29 against a person in making available a transaction or in the terms or conditions of a transaction.

30 (b) For purposes of this subsection (7), the term "residential real estate-related transaction" means

1 any of the following:

2 (i) the making or purchasing of loans or providing other financial assistance:

3 (A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation
4 or property; or

5 (B) secured by residential real estate; or

6 (ii) the selling, brokering, or appraising of residential real property.

7 (8) It is an unlawful discriminatory practice to:

8 (a) deny a person access to or membership or participation in:

9 (i) a multiple-listing service;

10 (ii) a real estate brokers' organization; or

11 (iii) any other service, organization, or facility relating to the business of selling, leasing, or renting
12 housing accommodations or property; or ~~to~~

13 (b) discriminate against the person referred to in subsection (8)(a) in the terms or conditions of
14 access, membership, or participation because of sex, marital status, race, creed, religion, age, familial
15 status, physical or mental disability, color, or national origin.

16 (9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a
17 person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having
18 aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this
19 section.

20 (10) The prohibitions of this section against discrimination because of age and familial status do not
21 extend to housing for older persons. "Housing for older persons" means housing:

22 (a) provided under any state or federal program specifically designed and operated to assist elderly
23 persons;

24 (b) intended for, and solely occupied by, persons 62 years of age or older; or

25 (c) intended and operated for occupancy by at least one person 55 years of age or older per unit
26 in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (3) and 24 CFR 100.304, as those
27 sections read on October 1, 1989.

28 (11) The prohibitions of subsection (1) against discrimination because of age and familial status ~~do~~
29 not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied
30 by no more than two families living independently of each other, if the owner actually maintains and

occupies one of the living quarters as the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Section 6. Section 49-2-501, MCA, is amended to read:

"49-2-501. Filing complaints. (1) A complaint may be filed by ~~or on behalf of~~ any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. ~~The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.~~

(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth ~~herein~~ in this section may not be considered by the commission."

Section 7. Section 49-2-503, MCA, is amended to read:

"49-2-503. Temporary relief by court order. At any time after a complaint is filed under this chapter, a district court may, upon the application of ~~the commission or~~ the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

1 **Section 8.** Section 49-2-504, MCA, is amended to read:

2 **"49-2-504. Informal settlement.** The commission staff shall informally investigate the matters set
3 out in a filed complaint promptly and impartially. If the staff determines that the allegations are supported
4 by ~~substantial~~ a preponderance of the evidence, it shall immediately try to eliminate the discriminatory
5 practice by conference, conciliation, and persuasion. The staff shall, upon the first working day following
6 receipt of a filed complaint, notify a potential respondent that the respondent is the subject of a filed
7 complaint. The notification must be in writing and must include a copy of the filed complaint, together with
8 all documents submitted to the commission or its staff with the complaint."

9
10 **Section 9.** Section 49-2-505, MCA, is amended to read:

11 **"49-2-505. Contested case hearing.** (1) If the informal efforts to eliminate the alleged
12 discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission
13 shall cause written notice to be served, ~~together with a copy of the complaint,~~ requiring the person,
14 educational institution, financial institution, or governmental entity or agency charged in the complaint to
15 answer the allegations of the complaint at a hearing before the commission.

16 (2) The hearing must be held by the commission in the county where the unlawful conduct is
17 alleged to have occurred unless the person, institution, entity, or agency charged in the complaint ~~or the~~
18 ~~commission~~ requests a change of venue for good cause shown. The case in support of the complaint may
19 be presented before the commission by ~~the staff,~~ the complainant, or an attorney representing the
20 complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance
21 with the Montana Administrative Procedure Act ~~except as provided in 49-2-508~~ Rules of Civil Procedure.

22 (3) The commission may make provisions for defraying the expenses of an indigent party in a
23 contested case hearing held pursuant to this chapter.

24 (4) The prevailing party in a hearing under this section may bring an action in district court for
25 ~~attorneys'~~ attorney fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~
26 attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure."

27
28 **Section 10.** Section 49-2-506, MCA, is amended to read:

29 **"49-2-506. Procedure upon a finding of discrimination.** (1) If the commission finds that a person,
30 institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice

1 alleged in the complaint, the commission shall order ~~him~~ the person or ~~it~~ the institution, entity, or agency
2 to refrain from engaging in the discriminatory conduct. The order may:

3 (a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory
4 practice found;

5 (b) require any reasonable measure to correct the discriminatory practice and to rectify any harm,
6 pecuniary or otherwise, to the person discriminated against;

7 (c) require a report on the manner of compliance.

8 (2) ~~Except as provided in 49-2-510, the~~ The order may not require the payment of ~~any~~ punitive
9 damages.

10 (3) Whenever a commission order or conciliation agreement requires inspection by the commission
11 staff for a period of time to determine if the respondent is complying with that order or agreement, the
12 period of time may not be more than ~~3 years~~ 1 year."

13
14 **Section 11.** Section 49-2-508, MCA, is amended to read:

15 **"49-2-508. Enforcement of commission order.** If the commission's order is not obeyed, ~~the~~
16 ~~commission staff or~~ a party may petition the district court in the county where the discriminatory practice
17 occurred or in which the respondent resides or transacts business to enforce the commission's order by
18 any appropriate order."

19
20 **Section 12.** Section 49-2-509, MCA, is amended to read:

21 **"49-2-509. Filing a Removal of complaint in to district court.** (1) Except as provided in subsection
22 (2) ~~or with respect to complaints alleging a violation of 49-2-305, the commission staff shall, at the request~~
23 of either party, issue a letter entitling the complainant or the respondent to ~~file~~ remove a discrimination
24 action ~~in~~ to district court if:

25 ~~(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and~~

26 ~~(b) 12 months have elapsed since the complaint was filed.~~

27 (2) The commission ~~staff~~ may not refuse to permit removal of a case to district court ~~if~~ unless:

28 ~~(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the~~
29 ~~investigative process;~~

30 ~~(b)~~ (a) the party requesting removal has waived the right to request removal to the district court;

1 ~~(e)(b)~~ more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless
2 the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

3 ~~(d)(c)~~ the party requesting removal has unsuccessfully attempted through court litigation to prevent
4 the commission staff from investigating the complaint.

5 (3) The commission ~~staff may~~ shall dismiss a complaint filed under ~~49-2-504~~ this chapter and ~~allow~~
6 the complainant ~~to~~ may file a discrimination action in district court if:

7 (a) the commission ~~staff determines that the commission~~ lacks jurisdiction over the complaint;

8 (b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep
9 the commission advised of changes of address; or

10 (c) the commission ~~staff~~ determines that the allegations of the complaint are not supported by
11 substantial evidence.

12 (4) A decision of the commission ~~staff~~ to dismiss a complaint brought under this chapter or to
13 refuse to permit removal to the district court is final unless a party seeks review by filing objections within
14 14 days after the decision is served on ~~him~~ the party. The commission shall review the decision in informal
15 proceedings under 2-4-604, ~~except that 2-4-604(5) applies only to review of a refusal to permit removal.~~
16 A party may ask the district court to review a decision of the commission made under this part. The review
17 must be de novo.

18 (5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under
19 subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection
20 (1), the complainant may petition the district court in the district in which the alleged violation occurred for
21 appropriate relief. Except as provided in 49-2-510, if the claimant fails to petition the district court within
22 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim ~~shall be~~ is
23 barred.

24 (6) If the district court finds, in an action under this section, that a person, institution, entity, or
25 agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice
26 alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission
27 order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

28 (7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged
29 violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination
30 provisions of Article II, section 4, of the Montana constitution or 49-1-102. ~~No other~~ Another claim or

request for relief based upon ~~such~~ the acts may not be entertained by a district court other than by the procedures specified in this chapter."

Section 13. Section 49-2-510, MCA, is amended to read:

"49-2-510. Procedures and remedies for enforcement of housing discrimination laws. (1) A complaint may be filed with the commission by ~~or on behalf of~~ a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within ~~1 year~~ 90 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) ~~(a) Except as provided in subsection (2)(b), if~~ If the commission, in a hearing under 49-2-505, finds that a person, institution, entity, or agency against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, ~~to vindicate the public interest,~~ assess a civil penalty pursuant to the statutes governing the award of punitive damages in this state:

~~(i)(a)~~ (a) in an amount not exceeding \$10,000 if the respondent has not been ~~found~~ adjudged in any prior judicial or formal administrative proceeding to have committed any prior discriminatory housing practice in violation of 49-2-305; and

~~(i)(b)~~ (b) in an amount not exceeding \$25,000 if the respondent has been ~~found~~ adjudged in any prior judicial or formal administrative proceedings to have committed one ~~either or more similar~~ discriminatory housing ~~practice practices~~ in repeated violation of a subsection of 49-2-305 during the 5-year period ending on the date of the filing of the written complaint; and

~~(iii)~~ in an amount not exceeding \$50,000 if the respondent has been ~~found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.~~

~~(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.~~

(3) In the case of an order with respect to a discriminatory housing practice in violation of

1 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental
2 agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the
3 order is judicially reviewed, no later than 30 days after the order is ~~in substance~~ affirmed;

4 ~~(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or~~
5 ~~regulatory agency; and~~

6 ~~(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including,~~
7 ~~where appropriate, the suspension or revocation of the license of the respondent.~~

8 (4) (a) When a complaint is filed under 49-2-305, a complainant, or a respondent, or aggrieved
9 ~~person on whose behalf the complaint was filed~~ may elect to have the claims decided in a civil action in
10 lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the
11 electing person of service of notice of certification for hearing under 49-2-505. The person making the
12 election shall give notice to the commission and to all other complainants and respondents ~~to whom the~~
13 ~~complaint relates~~ named in the complaint. Within 30 days after the election is made, the ~~commission~~
14 complainant shall commence a civil action in an appropriate district court ~~on behalf of the aggrieved person~~
15 ~~if the commission staff has made a finding that the allegations of the complaint are supported by substantial~~
16 ~~evidence. If the commission staff has made a finding that the allegations of the complaint are not supported~~
17 ~~by substantial evidence, the complainant may commence a civil action in an appropriate district court in~~
18 ~~accordance with subsection (5). An aggrieved person with respect to the issues to be determined in a civil~~
19 ~~action brought by the commission staff may intervene in the action.~~

20 (b) The commission may not continue administrative proceedings on a complaint after an election
21 is made in accordance with subsection (4)(a).

22 (5) (a) An aggrieved person may commence a civil action in an appropriate district court within 2
23 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within
24 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation
25 of 49-2-305. The computation of the 2-year period does not include any time during which an
26 administrative proceeding under this title was pending with respect to a complaint alleging a violation of
27 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from
28 breach of a conciliation agreement.

29 (b) An aggrieved person may commence a civil action under this subsection for a violation of
30 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of

1 a complaint filed with the commission except as provided in subsection (5)(d). If the commission has
2 obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed
3 under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the
4 basis for the complaint except for the purpose of enforcing the terms of the agreement.

5 (c) The commission may not continue administrative proceedings on a complaint after the beginning
6 of a trial of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with
7 respect to the same alleged violation of 49-2-305.

8 (d) An aggrieved person may not commence a civil action under this subsection (5) with respect
9 to an alleged violation of 49-2-305 if the commission has commenced a hearing on the record under
10 49-2-505 regarding the same complaint.

11 (e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this
12 subsection (5) or by a person against whom the violation is alleged, the court may:

13 (i) appoint an attorney for the applicant and the respondent; or

14 (ii) authorize the commencement or continuation of a civil action without the payment of fees,
15 costs, or security if, in the opinion of the court, the applicant party is financially unable to bear the costs
16 of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability
17 rests with the party claiming financial hardship.

18 ~~(f) Upon timely application, the commission may intervene in a civil action brought under this~~
19 ~~subsection (5) if the commission certifies that the case is of general public importance. Upon intervention,~~
20 ~~the commission may obtain the same relief that would be available to the commission under subsection (7).~~

21 (6) If the court finds that a person, institution, entity, or agency against whom a complaint was
22 filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged
23 in a similar discriminatory practice in violation of a subsection of 49-2-305, the court may, ~~in addition to~~
24 ~~the other remedies and injunctive and other equitable relief provided under 49-2-506~~ consistent with the
25 provisions of subsection (2), award punitive additional damages. The court may also award attorney fees
26 to the substantively prevailing party.

27 ~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons~~
28 ~~is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been~~
29 ~~discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance,~~
30 ~~the commission may commence a civil action in an appropriate district court. The commission may also~~

1 ~~commence a civil action in any appropriate district court for relief regarding breach of a conciliation~~
 2 ~~agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the~~
 3 ~~agreement.~~

4 ~~(b) The commission may file a civil action under this subsection (7) within 18 months after the~~
 5 ~~alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

6 ~~(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided~~
 7 ~~under 49-2-506, assess a civil penalty against the respondent:~~

8 ~~(i) in an amount not exceeding \$50,000 for a first violation; and~~

9 ~~(ii) in an amount not exceeding \$100,000 for any subsequent violation.~~

10 ~~(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that~~
 11 ~~involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.~~

12 ~~(8)(7) Civil~~ All civil and administrative penalties and other revenue generated under this section
 13 must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be
 14 used by the commission for housing discrimination enforcement part must be deposited into the state's
 15 general fund."

16
 17 **Section 14.** Section 49-2-601, MCA, is amended to read:

18 **"49-2-601. Criminal penalty. A** (1) Except as provided in subsection (2), a person, who or an
 19 educational institution, or financial institution, either public or private, or a governmental entity or agency
 20 who or which that willfully engages in an unlawful discriminatory practice prohibited by this chapter or
 21 willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its
 22 authorized representatives in the performance of a duty under this chapter or ~~who or which~~ willfully violates
 23 an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor
 24 and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

25 (2) A person may not be subject to any penalty under this section if the person acts in a manner
 26 consistent with the protection of the person's rights to avoid criminal or civil self-incrimination."

27
 28 **NEW SECTION.** **Section 15. Codification instruction.** [Section 1] is intended to be codified as an
 29 integral part of Title 49, chapter 2, part 2, and the provisions of Title 49, chapter 2, part 2, apply to
 30 [section 1].

6

8

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0350, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill that generally revises Human Rights Act procedures, transfers supervision of commission staff to Department of Labor and Industry, provides that neither the Human Rights Commission nor the staff have independent enforcement authority for violations of the discrimination laws, and eliminates the ability of the commission to obtain temporary restraining orders, enforce commission orders, or present cases in support of the complaint. The bill requires the commission to conduct investigations and hearings pursuant to the Rules of Civil Procedure and Rules of Evidence, establishes a heightened standard to prove a violation of the housing discrimination advertising provisions of the act, requires the commission to give notice of receipt of a complaint within one working day, provides that the Administrative Procedure Act does not govern contested hearings under the act, that punitive damages are not available in housing discrimination cases tried in district court, and allows for transfer of a case filed with the commission to district court, requires judicial review of commission decisions to be de novo, and eliminates the ability of the commission to file a discrimination complaint on behalf of a complainant in district court. The bill provides for all penalties and other funds generated under the human rights laws to be deposited the state general fund and an immediate effective date.

ASSUMPTIONS:

1. Neither the Human Rights Commission nor the Department of Labor and Industry would be eligible to receive any federal funds to offset the cost of the program because the law would not conform to federal standards governing eligibility for these funds.
2. The Department of Labor and Industry would require the same level of funding requested in the Governor's Executive Budget for the Human Rights Commission to operate the program. The loss of federal funds would be offset by a like amount of general fund.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Revenues:</u>	<u>Difference</u>	<u>Difference</u>
Federal Special Revenue (03)	(326,768)	(325,282)
<u>Net Impact on Fund Balance:</u>		
General Fund (01)	(326,768)	(325,282)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The proposed legislation would result in increased numbers of discrimination cases being heard in the district courts because some cases filed with the commission would be transferred to district court and cases decided by the commission would be reheard on appeal. The number of cases added to district court dockets is estimated to be 300 per year. The impact of this increase on district court expenditures is unknown.

(Continued)

Dave Lewis 2-18-97
LEWIS, BUDGET DIRECTOR DATE
Director of Budget and Program Planning

WALTER MCNUTT, PRIMARY SPONSOR DATE

Fiscal Note for SB0350, as introduced

SB 350

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS F. KEATING, on February 18, 1997, at 3:17 p.m., in Room 325.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Dale Mahlum (R)

Members Absent: None.

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 325, SB 290, SB 349,
SB 350, SB 353; 2/14/97
Executive Action: None.

HEARING ON SB 353

Sponsor: SENATOR DEL GAGE, SD 43, Cut Bank

Proponents: None.

Opponents: None.

Opening Statement by Sponsor:

SEN. DEL GAGE, SD 43, Cut Bank, is asking the Committee to just table this bill. He would like to make some comments so it is on the record for future sessions and future generations to take a look at.

Ms. Lenmark responded the assessment will be based on the benefits paid in a calendar year. The benefits for the calendar year will be calculated and reported to the Department on March 31 following the end of the calendar year. The first payment based on that calendar year's benefits will be paid June 30. If the insurer elects two payments then half of the payment will be due June 30 and the second half the following December 31st. That effectively moves up the payment of this assessment to the Department.

Currently, they are being assessed in November for a period that reaches back to July 1 and then goes to the following July 1 for the fiscal year. The Department is waiting for its payment. The new method will time the payment with the beginning of the Department's fiscal year. When the amendment is drafted, there will be no language regarding retroactivity.

The transitioning from the current method to the new method is what has created the problem. **Eddye McClure** has been working with them to make sure that is correctly drafted. We should see language clarifying the tax years that each particular method relates to so that it is clear.

The other critical thing about the effective date is that they do not intend for this new method to go into place until July 1, 1999. That is to give the Department an opportunity to look at its budget and make adjustments if necessary and also to recognize that its current budget is being acted upon in this legislative session. It will be funded as it has been in the past by the old type of assessment against the insurers.

{Tape: 2; Side: B; Approx. Time Count: 5:08 p.m.}

Closing by Sponsor:

SEN. KEATING closed by stating the committee would make a lot of people happy if they passed SB 290.

(NOTE: THE COMMITTEE TOOK A 9 MINUTE BREAK BEFORE HEARING SB 350, SEN. KEATING RESUMED HIS POSITION AS CHAIRMAN)

HEARING ON SB 350

Sponsor: SENATOR WALTER MCNUTT, SD 50, Sidney

Proponents: David Owen, Montana State Chamber of Commerce
Riley Johnson, National Federation Independent Business, (NFIB)
Jamie Neer, Jamie's Auto Body Shop
Kathleen Schulte, Northern Montana Association of Realtors
John Shontz, Montana Association of Realtors
Carol Phillips, Representing Self
Punky Darkenwald, Representing Self

Dean Randash, NAPA Auto Parts
Bob Gilbert, Montana Petroleum Marketers
Debbie Leadbetter, Representing Self
Diane Rice, Representing Self
Charles Brooks, Billings Chamber of Commerce
Ronda Carpenter, Montana Housing Providers
Karen Haar, Northern Montana Association of
Realtors
Jack Martinez, Superior Fire Apparatus
Karen Roche, Northern Montana Association of
Realtors

Opponents: Pat Echart, Human Rights Commission
Sue Fifield, Montana Fair Housing
Catherine Swift, Representing Self
Alane Harkin, Representing Self
Janice Doggett, Representing Self
Mike Melloy, Representing Self
Christine Kaufmann, Montana Human Rights
Kate Cholewa, Montana Women's Lobby
Sharon Hoff, Catholic Conference
Jim Meldrum, Representing Self
Al Smith, Montana Advocacy Program
Mary Westwood, Representing Self

Opening Statement by Sponsor:

SEN. WALTER MCNUTT, SD 50, Sidney, said the change in this bill from current is a result of many, many complaints about the structure and procedure which is being used by the Human Rights Commission. These complaints come from all over the state from housing business, legal, and other sectors of our economy. He stated what he wants everyone to understand is that this bill does not change the substance and commitment of human rights that this state is made of. Rather, it is looking at the procedures which are used by human rights.

SEN. MCNUTT referred to EXHIBIT 8. Exhibit 1 in the book began with a small newspaper ad from a Billings newspaper. The ad was placed by a 70-year-old lady. The Concerned Citizens' Coalition did a follow-up as a result of that ad. The ad had the word "adult" in it. She received a violation of which there is a copy on page 2.

After the Coalition visited the premise and did their "sting" operation, which SEN. MCNUTT stated he is reluctant to use that term but it is sort of what it was, they found that this lady wouldn't rent to them because of children so she had a violation.

SEN. MCNUTT said he is trying to present due process and what civil law means and the way the Human Rights Commission reacts to this. He said they had an informal hearing of which, on page 3, in the body of this letter it states, "The fact finding conference is not a hearing as provided in the law but rather an

informal, conversational conference. In view of the scope of the conference, it is an inappropriate forum for legal arguments. Any attorneys present may be used for consultation only. The information submitted at this conference will be considered as part of the Commission staff's investigation". SEN. MCNUTT said that statement was contrary to his way of thinking on the matter and he became interested in this.

The Coalition filed a complaint on page 5 of Exhibit 1 in EXHIBIT 8. He then referred to page 7, paragraph 11 and then page 10. On page 10 the respondent agrees to pay the claimant \$500 in the form of a cashier's check and this should be made payable to the Concerned Citizen's Coalition. She must also agree to perform one hundred hours of community service at \$8 per hour for the Concerned Citizen's Coalition. So we have a claimant that was rewarded with money and time.

SEN. MCNUTT stated that struck him a little bit odd as to the way things should be done. So he did more research and found out that this legislation is probably not a new issue, that the 46th Legislative Session approached this when Tom Judge was Governor. Some of the same language was in that bill that is in this present bill and our attempt is to reorganize the structure and the procedure.

SEN. MCNUTT said he had an attorney phone him from Missoula who was not able to attend so his testimony is submitted for the record. (EXHIBIT 9)

Proponents' Testimony:

David Owen, Montana Chamber of Commerce, said he often refers to the challenge of offering jobs and the challenge of being an employer today that has become increasingly difficult and he wants to focus on one of the strongest challenges that employers face. That is dealing with the Human Rights Commissions, more specifically the procedures used by that commission.

He clearly stated that is for good reason that the state has, as its policy, not wanting to allow discrimination. We have set up an agency to give people who feel as though they have been discriminated against, a place to take their grievance. We have watched the development of this agency over twenty years drift to a point where now the business community and his members believe it lacks balance. It is out of reach and beyond reason for the people who stand before it as the accused.

As SEN. MCNUTT mentioned, in EXHIBIT 8 SB 110 is a 1979 bill at the request of Governor Tom Judge, indicating this was an issue then. Maybe one of the answers to this is placing this commission in the Department of Labor. This issue is not new and it is certainly time to take a step that is reasonable.

Mr. Owen stated he is not present to defend the violators of human rights but they are asking for a change in these proceedings. Most of the businesses don't have full-time human resource development people and can't afford them. They employ about ten people and it is all they can do to try to keep their business open and do this all correctly. They deserve better procedures and it is time for their grievances to be heard, they have been ignored too long.

Mr. Owen said he tours the state a lot and learns a great deal in the twenty cities. He hears a lot about the Human Rights Commission and he hears this in every town he visits. The people tell him they feel guilty until proven innocent. They feel like the staff is there advocating for the complainant. The only response the business gets is that they had better get an attorney.

They have investigations that are left hanging open and hearings that are cancelled because people have left the state. The investigations aren't cancelled, they are just left open until the people may return. Someone called him two days prior to this hearing saying they invested a lot of time with their attorney to get statements from their employees that they were asked to get by the Human Rights Commission staff and also some of their past employees. They supported the position of the employer and when they turned them in they received a letter or a phone call to let them know those statements were being discounted because they were all employees. The employees were the very people they were sent out to get statements from.

It seems to most of these businesses that the claimants do not have any standards of proof for their claims. There are high standards to prove that these people haven't discriminated.

The frustrations have gotten to the point where employers face situations where their employees quite often say go ahead and discipline me, I'll just turn you in. We have fallen into a cycle in twenty years that this bill is trying to end.

Employer groups who have fallen into this go to the Human Rights Commission and sit down with antidotes and hear the technical explanation of why they do what they do and the Human Rights act like they haven't heard some of this before and they have a lot of empathy. Then the employer appreciates their time and six months later there is still no answer.

Something needs to change and **Mr. Owen** believes this bill will bring that about. It would be wrong for him as a spokesperson for the business community to belittle or ignore the people who feel like their rights have been violated and to take some of what we will hear in this hearing and suggest it is not important.

Mr. Owen believes this bill is an answer to some of the problems and is asking the Committee for thoughtful consideration.

Riley Johnson, National Federation Independent Business, (NFIB), which is over 9,000 small businesses. Their average member is two to three employees and under \$200,000 gross revenue from their business.

He said unquestionably, over the last fifteen years that he has worked with **NFIB**, the biggest complaint they have had from their members is dealing with the Human Rights Commission, not because they don't agree with Human Rights and agree with discrimination, but they encourage nondiscrimination and encourage Human Rights but something has happened.

Several of the businesses have characterized dealing with the Human Rights Commission as a David and Goliath story or experience. The Human Rights Commission is Goliath and small business owners are David. The problem his members are finding is that David has a problem. According to the Human Rights Commission rules, David is forbidden to bring his sling and his stones. It is pretty obvious what the outcome is going to be.

There is a fear among small business owners, which should not be there, regarding the Human Rights Commission and the way it operates. **NFIB** considers this bill an equal access to justice. They do not have staff attorneys or human rights staff personnel or staff accountants in their businesses. They also don't have the time to take hours and days away from their businesses without adding staff and costs.

In some cases, closing their business down when it is a one or two accounting business or law office or service business, virtually shutting their business down a couple days at a time to fight this. **NFIB** strongly urges a do-pass on this bill.

Jamie Neer, Jamie's Auto Body, Helena, said he really appreciates the committee taking the time to listen to the proponents. He just had his twentieth anniversary in business this past May. He owns a body shop in Helena.

His first experience with Human Rights started in 1992 and this is still going on today. The meaning of Human Rights should be for both parties, employees and employers but it seems to him and a lot of his fellow business people in the state, the employer is taking second fiddle to the employees. They all feel they do not have any rights anymore.

He said he has worked himself to death in his trade for 35 years, been blessed by God many, many times to have his own business for 20 years, and he is running scared anymore to know what he can and can't do.

Many of the employer's concern is that they are considered guilty before they even have had a chance to prove themselves innocent when they haven't done anything wrong. When you first get a letter in the mail which says you are being sued for something, for a person like **Mr. Neer** who has been in business as many years as he has, doesn't even know what he supposedly has done wrong. All of a sudden he received a lot of letters and decided to hire an attorney to find out what he did wrong, he didn't understand how the system is played, and then discovered what attorney bills are.

Employees, on the other hand, can go to Human Rights and get free counsel, ask any question they want and they will get an answer. When **Mr. Neer** was first exposed to this system he went to the Human Rights Commission to try to get help for himself. He was told they could not help him.

He felt as if he had no rights and they suggested he find legal counsel. **Mr. Neer** asked where all this money is suppose to come from? He has eleven employees and his average payroll is in excess of \$250,000 per year. In his trade that he dearly loves, his profit margins are getting cut down year by year.

He could have made this case go away in 1992 if he would have given this individual \$5,000. But one of his very close friends who has been in business longer than **Mr. Neer** has told him it is legal blackmail.

Mr. Neer said he is the type of person who can be pushed and pushed and as a lay person it has been gratifying to know that if you do things right, things can change. **REP. CHASE HIBBARD** has helped **Mr. Neer** with his first initial bill and **SEN. BARTLETT** was on a committee and it was really enlightening to **Mr. Neer** to know there are people who are concerned for the business people.

Governor Racicot told him that this state is made up of approximately 94% small businesses. **Mr. Neer** thinks it is time to start putting forth credit where it is due. If it wasn't for all these small businesses what would be left?

Mr. Neer said it is getting very frustrating to him to even keep his doors open. He gave an example of how the employees are getting educated. He has a procedure in his body shop and about a month ago one of his men was not following procedure. He wrote down what he wants done every day and he was not following procedure.

Mr. Neer said he went to this man and put his arm around him and told him that there is a problem here, he is not following procedure. The man looked at him and said, "So fire me, I'll sue you".

Mr. Neer said all he has done for this individual is provide him a job, provide him a very nice work place and provide him an

awful lot of money. All he expects in return is for him to do his job and he will get a check. Employees now days have completely changed.

Thirty five years ago, **Mr. Neer** said he was tickled to have a job. He loves doing what he is doing. He said he is at a point of pulling the plug on the whole thing. But he has worked too hard and too long to give up on this.

With help from **REP. HIBBARD** and other folks, things are working.

Mr. Neer went up to the state a week ago with one of his problem children, and he considers all these men his kids and feels that he is raising another family. He has been married 33 years. He said he asked if they had a cup of coffee and a place to smoke and they invited him right in. They answered his questions and all four of these people on this board said, "Jamie, fire him".

Mr. Neer said he had taken information on this individual. He asked if he should keep this man and keep getting harassed and called names? Should he let one individual disrupt his whole operation? What can he legally do?

All four of these people told him to fire this guy so **Mr. Neer** said he is on cloud nine and asks these people if they will sign a statement saying he could fire this individual. They all told him they would love to but can't, but if they were to get subpoenaed, maybe they could. **Mr. Neer** said he left feeling real good knowing that these people are listening and trying to do what they've told him they would do.

There have been a lot of statistics put out by the Human Rights Commission on these cases that are settled. They are not telling the whole story with these statistics. A very close friend of his had four cases going on at the same time. The man has done nothing wrong and it has cost this individual a pile of money.

Mr. Neer said he could have stopped the case against him in 1992 but feels there is a time a person needs to stand up for what he believes in. He hoped he has not said anything to offend anyone but the small business people are the backbone of this whole country.

Kathleen Schulte, Northern Montana Realtors' Association, Flathead County, said when a former governor appointed the first Human Rights Commission she cheered his actions and thought that Montana stood for equality which is great. Over the past two years she has been forced to question the conclusion she drew that day.

On May 2, 1995, a subpoena was served to her association to produce for examination books, papers and other evidence that might indicate discrimination against children. As an

association which had long been known for providing equal opportunity housing she was shocked.

Ms. Schulte said she could not imagine a realtor turning down an opportunity to provide housing for a family. She said she has to admit she also could not imagine a licensee turning down an opportunity to earn a commission.

Ms. Schulte said that she had been a foster mother to over forty abused and neglected teenagers. She has four children of her own and one grandchild. She would not work for a group that engaged in discrimination.

After the allegations were all leveled and 23 letters had been received by different Flathead Valley people, including the County Commissioners, threatening each with a \$50,000 fine, they began to discover the procedures of our present Human Rights Commission which do not offer due process.

Ms. Schulte furnished the committee a copy of the first letter (EXHIBIT 10) which was received from the Human Rights Commission. They like to say it was their intent to threaten them or have them pay the \$50,000 each. In the highlighted section you will see the first contract from the Human Rights Commission. They had already made a determination.

Ms. Schulte said their entire community was stressed out after the Human Rights Commission attorney publically called the citizens of the valley some of the worst discriminators in the country.

Briefly, three subdivisions whose restrictive covenants had been written by legal counsel and restricted by government planning bodies, were under the impression that they had established housing for older persons. They thought they had created their own Montana version of Sun City.

Families were not denied access to ownership of these homes, however, restrictive covenants were disclosed in order to comply with disclosure regulations passed by this legislature a few sessions ago. Wording should have been chosen more carefully to avoid the implication of discrimination against children. If the planners and legal counsel had been informed on how to set up legal housing for older persons, these subdivisions may have qualified under federal regulations as an exception to the regulation.

There has never been anyone claiming to have been discriminated against. The Montana Human Rights Commission searched over a year to try to find someone whose housing rights had been violated on this issue. There was no one.

From May 2, 1995 through today **Ms. Schulte** said she has come to know the Commission and their procedures. They spend over one

and one half years with their scare tactics and threats against innocent, kind people who only wanted how to do it right. Their legal counsel acted aggressively and with a mean spirit. They chose to level threats instead of conciliation for many months.

They were not able to act both as a complainant and as impartial administrator of the procedures. They were difficult to negotiate with, seeming focused on the money rather than fair procedures.

There was a letter with a \$50,000 threat in it. After negotiations had begun and they had decided they needed to be more conciliatory, they got a second letter for only \$37,500 each.

The Human Rights Commission was very uninformed on the specifics of the regulations at the time their charges were being leveled. They could not answer the simplest questions at public meetings. They closed the meeting to representatives from Flathead County which resulted in the county filing a lawsuit against them to open the meetings back up to the public.

Ms. Schulte said she has the greatest respect for the Federal Fair Housing Regulation and a great deal of respect for HUD who enforces the federal regulation and for their procedures. She does not have the same respect for the Human Rights Commission staff due to their failure to follow due process procedures. The Commissioners themselves have exercised too little control over the staff.

Ms. Schulte said she found it very peculiar in leveling their case against the citizens of her valley, the Human Rights Commission did not name the attorneys who wrote the covenants and did not name the planning body who created the restrictions. Indeed they were very discriminating.

Part of the settlement agreement that **Ms. Schulte's** association has with the Human Rights Commission allowed them to come to their association office and use their computer to do a word search for words that might indicate familial status discrimination. Their attorney composed the nine word list during the negotiations. The settlement agreement allowed them to visit anytime before January 1, 1997.

Three weeks before the end of their year the association heard from them. They wrote to say they would be in their office on December 18 to do compliance monitoring. **Ms. Schulte** said they were welcome but that was the day of the association's annual Christmas cookie party and they might want to consider a different day. **Ms. Schulte** agreed to let them come three days in January. They showed up four weeks ago.

Ms. Schulte set up one investigator with the computer and a data operator to assist her to do a word search for compliance. She

set up the other investigator in an adjoining room to look at the hard copy data. She returned telephone calls and went back to the computer to see how things were going. While she was out of the room, the investigator had given a different word list to the operator. She was searching for words not agreed upon in the settlement. She recognized the list as one that HUD had told them in January of the previous year not to use because it contained words which were not discriminating.

She discontinued the unapproved word search. When she cut off the computer, the word being searched was the word "quiet". The investigator acted in a manner that can only be described as hot-headed.

Ms. Schulte said she went into the other room where the other investigator asked her for hard copy books that the settlement agreement had closed to further investigation. She asked the investigators if they were there to monitor compliance with the settlement agreement. The lead investigator informed **Ms. Schulte** that she had never read the agreement. Since this was obviously not what was agreed to, she had to ask them to leave. She asked the investigator to leave a copy of the word list and she would not.

Ms. Schulte does not believe this is due process (**EXHIBIT 11**), nor fair and impartial.

The Human Rights Commission administrator has, since that event, furnished statements to the press. (**EXHIBIT 12**) There was no team of investigators in Kalispell recently trying to catch realtors using the term "quiet" to describe a property or neighborhood. Rather, there were staff members present to oversee a settlement in a recent case.

She asked if it were possible that the administrator had not seen the word list that the staff member received from the staff attorney? Or is it likely that the administrator sent a staff person to monitor a settlement agreement that the staff member claimed to have never read? If that staff member was present to monitor compliance, how could she explain why she didn't even bring a copy of the settlement agreement with her. She had to borrow a fax machine to have the attorney fax her a copy of the page with the nine word list.

She has four sworn affidavits in her Kalispell office attesting to the events of the investigative January visit. The investigator's actions of January indicate they were untrained in words at the time, even though HUD's word list recommendation. They should use credible investigative techniques. They should be forced to follow due process rather than their present guilty until proven innocent tactics. The staff should not be allowed to issue their own subpoenas, but should get Commission approval first. They should not be allowed to be the complainant, investigator, hearings administrator, and keeper of the fines.

This is unprecedented in the legal realm. Due process is the right to have a matter decided by an impartial party with the opportunity to present your side of the story.

Ms. Schulte's association did not have either when the letter (**EXHIBIT 10**) came to them. The tone of that letter shows a definite lack of impartiality and shows an abusive power. The Montana Human Rights Commission is unable to act as the complainant while remaining an impartial body.

The following quote was made by their administrator in a public hearing at Kalispell while their 23 cases were being processed. She stated, "You remind me of the people who used to hang signs in their windows that said 'NO INDIANS, NO DOGS ALLOWED'". These words are insulting and inflammatory.

Page 2 of the settlement agreement (**EXHIBIT 13**) has a highlighted statement which states that the agreement does not constitute an admission or finding that the settling parties have violated the Montana Human Rights Act.

As of the date of this agreement, no complaint has been filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice of the settling parties.

Ms. Schulte stated there are groups who interpret the actions they have taken to cut the Human Rights Commission budget and to testify on behalf of due process. The Commission acts as though they do not agree with Fair Housing Regulations. Realtors' associations have long been defenders of equal opportunity housing. They have been promoting it over thirty years longer than the law has existed.

They object to lack of due process; over interpretations of the law, a failure to educate and conciliate, and a practice that seems to be based on money and confusion. Either of two actions by the Human Rights Commission could have prevented all the travail that still continues. If they were not allowed to act as its own complainant, they could not have created an action without an injured party. They would have been forced to talk to the citizens of the Flathead Valley to correct the improper covenants.

If the Human Rights Commission would have filed its complaint and then followed Section 49-2-504 of Title 49, the citizens of the valley would have cooperated and wiped out the problem. That section states the Commission staff shall informally investigate the matter set in a filed complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

The good citizens of the Flathead Valley would have cooperated. They only needed to be made aware of a problem. When due process is thwarted, the rights of all citizens are threatened. We all lose.

{Tape: 3; Side: A; Approx. Time Count: 5:58 p.m.}

John Shontz, Attorney, Montana Association of Realtors, said he has been given the charge of walking through this bill.

This is a place in the law where we have deposited the power to file a complaint, to investigate the complaint, to prosecute the complaint, to sit in judgement of the complaint, to levy a fine as a consequence of the judgement and to keep the money all by one entity. No where in our law do we allow that to happen except here.

It is a common course of action in civil law countries such as Spain, but not here. Even in a criminal action, we separate the complainant from the police who investigate it, from the County Attorney who makes an independent judgement rather not to prosecute it, to the judge or jury who sits in independent judgement of the matter.

Mr. Shontz submits what they trying to do is present a concept that brings the Human Rights process into compliance with our basic common law values. He also suggests this legislation in no way affects the discrimination laws that we have assembled in this state to protect people's rights. They are good and needed laws.

On page 1, under the purpose in the bill it makes a substitutive change as it does in Section 2. It states the staffing process of the Human Rights Commission would be placed under the Department of Labor as a division. The Commission would remain an independent, administrative law body that would sit in judgement of cases and controversy as is appropriate.

Structurally, it would work in some respects, for example, for the Department of Environmental Quality and the Board of Environmental Review. The Board is administratively attached to the Department and the work is done staff-wise at the Department level. This is not a new concept.

Mr. Shontz referred to Exhibit 2 in **EXHIBIT 8** which is a bill from the 1979 legislative session which would have accomplished precisely those things. Now this is another request twenty years later.

Section 3 of the bill is regarding subpoena power. There is a provision in our law where the Commission can grant subpoena power to a staff member.

Mr. Shontz suggested to the committee that language be stricken and the procedure ought to be that if there is cause to issue a subpoena, that the staff member can approach the Commission or a member of the Commission, lay the case before them, and the Commissioners can then issue the subpoena. This is a small check and balance in the process of administering a law that we expect to happen in any other venue.

Section 4 talks about adopting rules and this amendment provides, under procedural manners in cases of controversy, that the Commission and staff use rules of civil procedure and the rules of evidence in handling cases. This may be troublesome at the informal staff level, but **Mr. Shontz** would like to present this as methodology for making sure that people's due process rights are protected.

The expectation throughout this process ought to be that if someone's rights are affected, in any way, they ought to have the protection of the law they would be granted were they involved in a complainant district court.

Page 4, line 6 of the bill is an amendment at the request of Lee Enterprises, four of Montana's daily newspapers.

Page 7 is the Section which deals with the filing of complaints. Under current law, the Commission has the ability to file its own complaints. In the housing arena at the federal level **Mr. Shontz** has not found this as a grant requirement. He strongly urges the adoption of this amendment. The judge and the prosecutor should not have the power to bring us before them.

Section 7, bottom of page 7 talks about court injunctions. As a quasi-judicial board the Human Rights Commission has the authority to issue injunctions against parties to cease and desist. They should not have the ability to act as an advocate in this sense for anyone. They should remain an independent, impartial body of folks investigating and standing in judgement of complaints. If a complainant needs to get an injunction, they should do so. The Commission itself can issue it or if an injunction is necessary, the complainant can seek one in district court.

Page 8 of the bill, line 2, section 49-2-504 is a troublesome section in that many people feel that line 4 actually would read that the Commission staff shall immediately attempt to eliminate the discriminatory practice by conference conciliation and persuasion. Unfortunately, many people will say in reality if you substitute those three words for intimidation, that is a better word to put there in terms of practice. That is a management issue and not something the legislature can address. The amendment on page 8, line 4 addresses the level of evidence required before we go to informal review. On line 4 the law states if the staff determines that the allegations are supported by substantial evidence, then we move forward with this informal

process. This means there is possibly 25% evidence that a person may or may not have committed alleged discrimination. In civil matters in District Court in Montana and around the country, that standard is a preponderance of the evidence. There has to be more evidence than not, that discrimination has occurred. If there is not more evidence than not, then the complaint ought not to move forward here. It can go to District Court.

The amendment on line 5, which states the staff shall, upon the first working receipt of filed complaint, notify the respondent that the respondent is the subject of a filed complaint. **Mr. Shontz** said in the Department of Commerce there is a professional occupational division which does that. That doesn't begin or initiate an investigation until the respondent is notified and has a chance to respond in writing that, in fact, a complaint has been filed. That is bare bone, simple rule of law. If a complaint comes in on Friday, it ought to be sent out on Monday.

In a contested case hearing, Section 9, the Commission staff should not be presenting cases and operating as an advocate for anyone in this process. That is the complainant's job and the respondent's job, nor should the expectation be any less in terms of due process. This is a very serious matter at that level. Section 4 under our law the prevailing party can win attorneys fees.

Page 9, Section 11 states if the Commission's order is not obeyed, if the District Court order is not obeyed, or if a Justice Court order is not obeyed, the person who has won the judgement has the right to go to District Court and have that order obeyed. The Commission should not be in the business of doing that. In Montana, District Courts don't appeal to the Supreme Court to have their orders obeyed. Justices of the Peace do not run upstairs to the District Court and ask the District Judge to have their orders obeyed. That is the job of the parties to the transaction.

He asked the committee to turn to line 12, page 9. One of the issues here is that once a case is resolved, the statute allows the Commission staff period up to three years to monitor the situation to make sure the law is being followed. **Mr. Shontz** suggests that one year is adequate.

Referring to Section 12, line 26 he stated under the law that we have today, the Commission or its staff can hold a case at that level for a year, essentially without resolution, even if the parties choose to take the case to District Court. If a party or parties chooses to take a case to District Court it ought to go there.

The Commission and its staff should not have the ability to prevent cases from going to District Court. That is the one-year letter issue. A complaint is filed, people get busy and it sits for a year. While it is sitting, memories fade, people move,

documents are lost and at the end of the year often nothing happens except a letter is issued that states they can go to court. If a party wants to move an action to District Court, they should be able to do that. The same rule applies in Justice Court. If, in fact, a case is moved to District Court, then the Commission and its staff should consider from their point of view that the case is over.

On page 10, line 16, a party may ask the District Court to review a decision of the Commission made under this part. This review is not an appeal, but essentially you start over with using the proper rules of evidence, and using the proper rules of civil procedure. Under the law today, cases brought before the Commission and managed under the rules of administrative procedure are not held to the same procedural standards as an action in District Court. It would not be appropriate for the District Court to simply review a record that is founded in evidence and procedure that no other case before the District Court can be brought under.

If this legislature chooses to make the Human Rights Commission operate under the rules of evidence and the rules of civil procedure, then it probably wouldn't be necessary for cases at the District Court to be reviewed *de novo*. They can be reviewed as appeal. The rules of the game would apply at the administrative level as they do at the District Court level.

In explaining page 11, Section 13 of the bill, **Mr. Shontz** stated there are two things involved, the injured party files the complaint, the Commission does not file the complaint, nor does its staff. Line 8 says the complaint must be filed within one year. The amendment indicates 90 days. The grant rules under HUD require 180 days and he encourages the change from 90 to 180 since that is the law.

The next section deals with the structure of punitive damages and he suggests as required by federal law, that individuals who have a repeated pattern of discrimination, should receive additional fines over and above compensatory damages and in this case, \$10,000 if they have done it once before, \$25,000 if they've done it multiple times. Those penalties should be assessed under rules of punitive damages in the state.

Mr. Shontz said one other section in the bill makes sure folks that go to court, that can't afford an attorney can get one and that all civil and administrative penalties not go to anyone other than the State General Fund. Finally, page 14, Section 14, one of the things that occasionally happens is that real estate folks are required to disclose adverse material facts, things they know about the property that may not be kosher. If they obey one law, they inadvertently violate another law. When that happens, an individual should not be required to choose between the more onerous penalty of violating one law versus the other. The section states if a person essentially does what he is

suppose to do in his profession, then he will be held harmless for that act under this statute. That is all this bill does.

Carole Phillips, Representing Self, Kalispell, supported SB 350. (EXHIBIT 14)

Punky Darkenwald, Representing Self, Billings, said she is the infamous 'ad lady'. She said there is a copy of her ad in the notebook (EXHIBIT 8). She read the ad to the committee and said she placed the ad August 3, 1991 and had two phone calls on the condo. She agreed to meet them and one lady showed up.

Ms. Darkenwald said she explained to her she had previously agreed to show it to a friend and that she would know Saturday morning whether or not she wanted it. She told her she would call to let her know, but this lady did not have a phone. The next morning a couple from Columbus, Montana phoned **Ms. Darkenwald**, got the key from her, looked at the condo and were back within fifteen minutes. They gave her a check.

She thought the condo bi-laws protected her in regards to renting it to a family with children. The bi-laws stated she could not rent to anyone under age 18. The units are managed by very knowledgeable people, the Corning Company. In all the time they owned the condominium, she had never seen youngsters in there.

Ms. Darkenwald said next she got a phone call from the compliance officer for the Concerned Citizen's Coalition. She asked **Ms. Darkenwald** if she would not agree that there was an unwritten agreement with the owners in the condominiums to never rent to a minority. **Ms. Darkenwald** said that is a lie. The compliance officer then asked if she realized she would receive a substantial fine and possibly a prison sentence when HUD got finished with it.

During her hearing, **Ms. Darkenwald** said she asked an American Indian woman what she had done or said to upset her. She answered, "Nothing, it is just a feeling I have had".

Ms. Darkenwald said she has paid \$1,000 in legal fees and she is retired. She is terrorized and angry. She talked to an attorney who told her if she had six figures she could fight it. She received no copies of anything in the hearing and was told she could have an attorney present but he could not speak to her nor could she speak to him.

She asked the hearing officer what a person who is 60 to 65 is suppose to do if they want to live somewhere quiet and your kids are grown and gone and you are sick of yard work. She responded that **Ms. Darkenwald** should buy 120 acres and build a house right in the middle of it.

Ms. Darkenwald said if these people had called her or the company that manages the condo units and told them they were out of

compliance, it would have been fixed within a week. But instead this past year and one-half she has gone through pure 'hell', and so have the Cornings. They were told they were going to have to build a very large playground in the middle of the condominium units.

{Tape: 3; Side: B; Approx. Time Count: 6:35 p.m.}

Ms. Darkenwald said she has been pretty fair to everyone but who is the Human Rights Commission responsible to? She thanked the committee for hearing the stories from people in this state. She said somebody has got to get a handle on this situation.

Candace Torgenson, Montana Retail Association, submitted her testimony for the record but did not speak. (EXHIBIT 15)

Dean Randash, NAPA Auto Parts, spoke in support of SB 350. (EXHIBIT 16)

Bob Gilbert, Montana Petroleum Marketer's Association, spoke about one of their members who owned two bulk plants. In that plant he employed a manager who drove the truck, delivered the fuel, maintained the equipment including the plant facilities, cleaned up, handled the barrels of oil, stocked the products and also employed a secretary. The secretary's duties were to answer the phone, take orders and do light bookkeeping.

After a period of time the manager quit, the employer then advertised for a new manager and the ad read "Manager for small bulk plant, for small bulk fuel distribution center, all duties and responsibilities included". As the applicants called, he explained to them what those duties where, which are described above.

A couple a weeks later, the secretary called wanting the manager's job. The employer asked if the secretary understood the job duties. The secretary responded all this was understood but did not want to do all that, just be the manager. The employer said he could not hire the secretary unless the descriptions in the job requirement were followed.

A couple of weeks after that the secretary quit and then filed a sexual discrimination suit against the employer because she didn't get the job.

That happened two years ago and the case has not yet been decided. We do not have due process, we have no process. That is why this bill is here.

Debbie Leadbetter, Ennis, Montana, read her husband's testimony. (EXHIBIT 17)

Diana Rice, Harrison, Montana, supported SB 350 on behalf of her father-in-law. (EXHIBIT 18)

Charles Brooks, Billings Chamber of Commerce, said they support SB 350. **Mr. Brooks** personally stands in support because he was a subject of an investigation over fifteen years ago when he had a small retail chain of stores and was the Chief Operating Officer and Vice President of. They had over 200 employees. They had an employee who was not punctual and continually reminded she should show up on time.

The charge was filed against **Mr. Brooks** instead of the store manager and after over a year of real personal investigations of him, his lifestyle, and his company, the case was dismissed.

His company spent thousands of dollars trying to defend themselves on a case that could have been resolved in less than 30 days, had it been properly handled by the Human Rights Commission. The problems with the Human Rights Commission has been going on for an exceedingly long time.

Ronda Carpenter, Executive Director, Montana Housing Providers, which is a coalition of eleven landlord associations around the state with approximately 900 members who provide housing to about 11,000 units of housing to Montana citizens. They would like to be on record as supporting SB 350.

Karen Haar, Northwest Association of Realtors, said she expected about 20 or 25 other realtors to come down with them, they began dropping out and all for the same reason. They were afraid they would be targeted and blacklisted, that the Human Rights Commission would go after them.

Ms. Haar said she has never been accused of discriminatory practices and has always believed in fair housing. As members of the real estate profession, they have to be constantly on guard to protect everyone and not to discriminate.

In addition, they always have to be very careful not to show preference towards any special group on the basis of race, creed, religion, sex, etc. She submitted a poster brought to Kalispell two years ago. **(EXHIBIT 19)** They cannot use discriminatory posters or advertising at all.

Two years ago in the winter of 1995, the staff of the Human Rights Commission came to Kalispell and at a public meeting brought posters, which have been recalled.

Ms. Haar said she still sees them and at the Flathead Building Association she saw one last week. She asked the committee to inspect what they used as a logo. It is a dream catcher with a teepee in the center.

Ms. Haar does not believe this shows standards of impartiality and objectivity.

Jack Martinz, Superior Fire Apparatus, supported SB 350.
(EXHIBIT 20 & 21)

Karen Roach, Board of Directors, Northwest Montana Association of Realtors, distributed (EXHIBIT 22). She believes that fair housing regulations are necessary and does protect the public. The Human Rights Commission recently claimed that they do no testing. The brochure (EXHIBIT 22) states the Commission conducts testing.

Also, the administrator quotes in the press, "An investigator may pose as an interested buyer on the phone". This is testing. One of the 23 tested in the Flathead case has shared with others that not only did the tester pose as a buyer, but set an appointment for the next afternoon to view a home. The agent set up the appointment with the sellers in a mobile home. They cleaned and prepared for a showing. The agent showed up and waited and waited, only to have to apologize to the sellers for their wasted time and efforts. Fair treatment, she wonders?

Opponents' Testimony:

Pat Echart, Chair, Human Rights Commission, Glasgow, gave a list of other members of the Commission. She said they work very hard to understand and deal fairly with the issues before them. The five of them come from around the state and as business owners, employers, and employees, are very concerned the Commission's decisions are neutral and objective.

The staff is very competent, hard-working and dedicated and find themselves always behind in their work because of increased numbers of cases filed and a shortage of staff to deal with them. This has resulted in a large backlog of cases.

In spite of that, **Ms. Echart** said the process for the most part works well for complainants and respondents alike. In the last bi-annum, they screened nearly 7,000 complaints which resulted in over 1200 cases being filed and closed approximately the same number during that period. This was a 14% increase from the two years preceding that. Of the cases they closed, 37% favored the complainants, and 29% favored the respondents.

Human Rights in the State of Montana must be protected and the Commission has been helping to do this for 23 years. As such, they believe they should be part of any process that will make a change in this assignment.

She acknowledged the serious criticism of the actions of the Commission. She stated the committee must also understand that the criticism represents a very small part of what they do. They realize they made some procedure mistakes in the Flathead, but they are very serious about preventing mistakes like these in the future and have adopted new protocols to hopefully avoid a repeat of these errors. They are open to suggestions for improvements.

They are convinced this bill won't accomplish the wishes of the concerned parties. What will happen is that the processed outlined in the bill will be very costly and cumbersome, it will subject employers and housing providers to separate state and federal investigations and litigation.

Ms. Eckhart distributed a letter from HUD. (EXHIBIT 23) She said this letter expresses their view that this bill will preclude them from engaging in the present work-share arrangement with them which would cause a loss of a significant amount of the Human Rights Commission funding which would mean they wouldn't have to investigate the cases under state law and then HUD would dually investigate the cases under federal law.

Another factor, if this bill is approved is that many of the cases that are resolved now in the Commission's informal proceeding would be removed from their jurisdiction into the already overcrowded court system. They have asked the staff to draft a substitute bill which will create some of the administrative separation that the public is concerned about. To accomplish this, they propose their staff will not present any cases in administrative sharing before the Commission. Pattern and practice cases like the Flathead matter would be referred to the Attorney General's office. This substitute legislation would also clear up any other confusing areas of the law. They are most willing to work out differences and contribute to the success of this legislation.

The administrator, **Anne McIntyre**, would be willing to go over their specific recommendations before executive action is taken on this measure. She thanked the committee for hearing her speak.

Sue Fifield, Executive Director, Montana Fair Housing, said they work on housing discrimination issues across Montana. They believe that the majority of housing providers in Montana believe in and support the ending of housing discrimination. They believe the supporters of this bill might not be aware of the full impact this bill will have on housing discrimination cases in Montana for parties on both sides. They oppose SB 350.

This bill takes away Montana's substantial equivalency to the Federal Fair Housing Act. By passage of this bill, the state will be taking away state control of housing discrimination complaints. They would then be in a position of filing in both the state and federal arenas. By doing this, costs are raised for both the housing provider and the consumer in any housing discrimination complaint filed.

Currently, when they receive a complaint and if the subsequent investigation of the allegations suggest that discriminatory acts did occur, they file the complaints with the Montana Human Rights Commission and HUD. Because the Montana Human Rights Commission is substantially equivalent and HUD contracts with them, they are

the ones that do a single investigation. If the bill is implemented, it will require a dual investigation, one by HUD and one by the Commission.

They will be placed in a position of obtaining legal counsel from the beginning of their complaint process. Many times the Commission will be able to set up a face-to-face meeting with all parties involved to allow the presentation of facts from both sides. In their experience, this process has been very successful and alleviates the legal costs for both sides. If this bill passes, this process will most likely not be implemented at all. Many times if both sides can sit down and understand each others concerns, the complaint can be dealt with in a more expeditious and positive manner.

Furthermore, utilizing the federal process, the cases usually secure much higher settlement amounts. Federal cases base settlement awards on a national average rather than a state average. She quoted examples. She said they also offer work shops to ensure that people understand the law.

Ms. Fifield stated that passing this bill is not going to accomplish what supporters of this bill want to accomplish. They believe the bill will be detrimental to both sides of the complaint process by increasing costs with legal counsel and taking the control out-of-state to the federal process.

Ms. Fifield said the poster (**EXHIBIT 19**) was not a poster from the Human Rights Commission but was from another fair housing organization through a HUD grant, and the origin of that grant was based on national origin, particularly Indian. She urged the Committee to oppose this bill in its present form.

{Tape: 4; Side: A; Approx. Time Count: 7:15 p.m.}

Catherine Swift, Representing Self, read her written testimony. (**EXHIBIT 25**)

Don Waldron, Montana Rural Education Association (MREA), was unable to attend but sent his written testimony with **Catherine Swift**. (**EXHIBIT 26**)

Alane Harkin, Private Citizen, urged the opposition of SB 350, explaining in 1993 she had been served with a complaint from the Human Rights Commission alleging she, as a landlord, had discriminated against a potential tenant.

She said she found the Human Rights Commission staff to be very helpful and non-partisan in their dealings with her; in fact, they gave her information regarding procedure, though they did not coach her in which steps to take when.

Ms. Harkin stated both she and the complainant wrote their testimony and then went into a mediation meeting, which was set

up at both parties' convenience. She said she was impressed with the mediation skills of the facilitator as they moved through the process, explaining the complaint was filed in August, 1993, and resolved in December, 1993.

Ms. Harkin reported she did not have to seek legal counsel and the only cost was the short amount of time she had to take off work, which was done at her convenience.

Ms. Harkin suggested SB 370 would not allow individuals the opportunity to go to the Human Rights Commission to represent themselves, but would make them adversaries in a litigious process and would force them to hire attorneys. She urged the committee to give the Commission time to make changes which would help all citizens in a better fashion.

She gave a personal example of how she suffered sexual harrassment as an employee for years but was afraid to come forward, so someone else filed a claim for her. She felt there should be a method to help people have access to groups, like the Human Rights Commission, which would protect rights; however, the Commission was neither all bad, nor all good. **Ms. Harkin** asked for a chance to see what the other bill would look like.

Janice Doggett, Attorney, said she had worked with staff from the Human Rights Commission and reiterated what **Catherine Swift** said regarding the process being open, accessible, and fair to both parties.

She spoke to some of the procedural aspects of SB 350 which are stated in the following:

(1) Provision for *de novo* review after the Commission hearing. There would be an informal investigation, formal hearing before the hearing officer, appeal to the Commission and appeal to the State District Court; however, on top of that SB 350 would allow another *de novo* review. It would not be cost efficient for either employees or employers; nor would it be necessary because there was currently a process for judicial review.

(2) From the inception, rules of civil procedure and rules of evidence would have to be used, which would be acceptable during the formal hearing process but during the informal process it could be cumbersome and time-consuming.

(3) Dealing with EEOC. She said she would much rather work with the Human Rights Commission than the EEOC. SB 350 would allow either the claimant or respondent to go right to District Court without the time for an informal process to take place; however, if the employer went, the EEOC would still investigate, but if the claimant went, they could decide whether they would like to join their EEOC complaint in district court; therefore, the respondent had no control over when EEOC would investigate, which

could mean there would be a claim in district court as well as an EEOC claim.

Ms. Doggett cautioned the committee to look at the provisions of SB 350.

Mike Meloy, Attorney, said he had spent 20 years litigating cases before the Human Rights Commission, representing both plaintiffs and defendants. He said over the past four years almost 2,900 cases had been filed with the Human Rights Commission and only 14 of those had been initiated by complaint of the Commission.

Mr. Meloy suggested the way SB 350 was drafted would have devastating impact on 99.5% of the total cases because procedures within the bill were being changed which would affect them, as stated in the following:

(1) When it was said the Commission had no more enforcement authority, the partnership between the federal and state governments would be lost. This partnership brings over \$300,000 per year to Montana for the Human Rights Commission and also permits the state of Montana to handle its own cases.

(2) Much longer period of delay between the time of filing and investigation of the charge (informal process), which could mean attorneys getting involved in the investigation, something they did not currently do. This would turn this informal process into attorneys' dreams because they would have to be involved from the start and could not quit until it was settled.

Mr. Meloy maintained the drafter of SB 350 didn't do much in court because:

(1) As far as he knew, cause was not necessary for the issuance of a subpoena.

(2) Every case he had ever done before the Human Rights Commission hearings officer required following the rules of evidence.

(3) It imposed a requirement on a currently informal process that the rules of civil procedure apply, which meant the discovery done during the investigatory stage would be done pursuant to the rules of civil procedure. Those rules could not be done without a lawyer, i.e. lawyers would be doing things they never do now and the cost would rise substantially.

(4) Page 10 -- the sentence added to the section dealing with the Commission dismissing a complaint was broader; therefore, if a de novo hearing was desired, it shouldn't be in that section. Also, from the employer's perspective, a de novo hearing was not a good idea because it could be perceived as having a second chance if the employer lost before a hearing examiner; in addition, the costs would double.

(5) Section which seemed to dump damages into the General Fund, and as it was now written seemed to amend a provision of the Housing Discrimination Code where penalties recovered were credited to the General Fund. He maintained the language "part" pertained to the entire operative sections of the Human Rights Act. If it was the intent of the sponsors to include individual damages sought in connection with a Human Rights claim to go to the General Fund, there would be never be a charging party who would allow the damages to go to the General Fund.

Mr. Meloy suggested if a person thought something was wrong with the provisions of the Human Rights Act which authorized the Commission to bring complaints by themselves, another bill besides SB 350 would be necessary because SB 350 was not in their best interests.

Christine Kaufmann, Montana Human Rights Network, read her written testimony. (EXHIBIT 27)

Frederick F. Sherwood, Attorney, was unable to attend so sent his written testimony with **Christine Kaufmann**. (EXHIBIT 28)

Kate Choleva, Montana Women's Lobby, said the Human Rights Commission dealt with discrimination issues which extended beyond what happened at the Flathead, and many of those incidents involved women and children. She said they did not want the ability of the Human Rights Commission to address discrimination gutted, which is what they believed SB 350 did.

Ms. Choleva agreed with **Christine Kaufmann** it would be more honest to eliminate the Human Rights Commission than to strip its enforcing powers. She said they disagreed the Human Rights Commission advocated for clients; rather, they advocated for nondiscriminatory practices.

As for the Flathead issue, she said it seemed a law was broken accidentally and the Commission enforced it; however, retaliation was part of the issue but revenge for this incident would hurt hundreds of Montanans suffering discrimination.

Ms. Choleva suggested Montanans would be fooled into thinking the legislature supported human rights laws if the way to enforce them was deleted. She expressed opposition for SB 350.

Sharon Hoff, Montana Catholic Conference, said the Catholic Church had broad statements concerning discrimination; however, she did not have all the facts concerning the Flathead case. She stated she felt SB 350 weakened the Human Rights Commission and took away a great deal of their way of dealing with complaints.

Ms. Hoff said one of the pieces for the Catholic Church was to ensure people were not discriminated against for any reason, and they would support any person whose rights had been challenged. She wondered if the budget cut would be transferred to the

Department of Labor and if the monies would be restored so the Department could hire the number of people they needed. She referred to Page 13 and said "general public importance" seemed to be the equivalent of the common good, which was always considered by the church because it wanted to see businesses thrive, yet give individuals the process to file legitimate complaints.

Ms. Hoff said one piece within the Welfare Reform Law was the work requirement and wondered if federal sanctions would come if there were a lot of complaints based on race or sex. She urged the committee not to support SB 350.

{Tape: 4; Side: B; Approx. Time Count: 7:53 p.m.}

Jim Meldrum, Private Citizen, agreed with the opposition given to SB 350, explaining he worked with people with disabilities and many of them would be unable to employ an attorney. He asked the committee not to approve SB 350 as it was currently written.

Al Smith, Montana Advocacy Program, said they advocated for the rights of persons with disabilities. He informed the Committee the Human Rights Commission worked because the process and procedure was reasonable.

Mr. Smith also said they found the investigative process often helped people resolve matters before the litigation step. He explained informal procedures as something which helped people work out the problems, and shared an example of a hearing-impaired person who was denied an interview for a bookkeeping job.

He said if the law had been as in SB 350, she would have gotten an attorney within 30 days which would have cost a great deal of money; however, the informal process allowed the ensuring of employer education and policy changes, which cost virtually nothing.

He suggested SB 350 would add another layer of bureaucracy because federal investigations would also be involved, and added there was a backlog in the state HRC; however, the complaints were thoroughly investigated and mostly settled without litigation.

Mr. Smith said he referred folks to HRC rather than litigation because it was not always necessary to go to court and people with disabilities were often unable to process the complaint themselves, but could be helped by HRC. He said if there were problems, they should be addressed; the whole agency should not be killed.

Mary Westwood, Private Citizen, said she had always been proud to have been raised as a Montanan who was taught to treat people as individuals and accept them on their own merits; however, she had

since learned that was not always true because she could see discrimination in various places. She had been asked to serve on the board for a fair housing group in Billings and as she learned more about this issue, she realized there was a great deal of discrimination in her community, especially against Native Americans.

Ms. Westwood suggested it was hard for people to admit they discriminated because of attitudes they were raised with, heard or because it was easier to go along than do something about it. She shared a story about a Native American mother with two children who lived in a fairly nice part of town. The dwelling was a duplex, with the owner living in the other side. While living there, the mother and children did not speak above a whisper, did not play the TV after 8 p.m. and did not have friends in. When her father visited and dropped a cigarette butt outside the door, she was threatened with eviction because she had damaged the property.

During vacation their large screen TV disappeared; however, their apartment was locked when they returned home. The mother was an excellent housekeeper, well employed by the federal government; yet, she and her family had to live this way because in Billings there would have been no affordable housing for them. They helped this family contact the Human Rights Commission.

Ms. Westwood also shared a personal experience about employment as a copy editor for a newspaper but receiving less pay than the men because she was not married nor did she have a family; however, she was told it was all right. She said if SB 350 passed, it would be more difficult for people to come forward with their human rights complaints. She reminded the committee HRC was a conscientious agency and needed their independence and needed to be supported. She urged the committee to look at the specific problems of the agency but not damage it.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked how many cases the Human Rights Commission investigated within a year. **Pat Echart** said they investigated about 600 cases per year.

SEN. BENEDICT referred to the statement some people were happy, some were unhappy and a handful of cases were mishandled and wondered if the irreparable damages of the mishandled handful was acceptable to the Commission. **Ms. Echart** said it was not acceptable.

SEN. BENEDICT asked if it was fair to characterize people who had been harmed by the Human Rights Commission as gophers. **Mary Westwood** said no, but SB 350 stripped the agency of its independence.

SEN. DEBBIE SHEA asked where the legislation was that **Ms. Echart** was working on and wondered about the comments "it lacks balance", "equal access to justice", "employers taking second fiddle to employees", "no due process", "abuse of power", "witch hunt", "judge, jury, executioner and administrator".

Ms. Echart said it was the intention of HRC as soon as a case was filed, the process of conciliation and mediation would begin through an investigator who contacted both parties to resolve the matter before it went any further. She said even if the matter went into the investigatory stage and further, all along the way there was opportunity to settle the case and for both parties to talk to each other.

SEN. SHEA asked if the settling meant the \$5,000 standard heard throughout the hearing.

Ms. Echart said the settling was an agreement between both parties, and as for the legislation, someone was not carrying the bill but an amendment had been submitted for the Committee's consideration.

SEN. JIM BURNETT asked what it cost the plaintiff to request the Commission to investigate.

Mike Meloy said it didn't cost the person bringing the complaint anything, as long as they were not represented by counsel.

SEN. BURNETT asked if it cost the defendant anything.

Mr. Meloy said the preliminary stages of the proceeding included:

(1) The complainant filling out the complaint and going to the Commission office to sign it.

(2) The complaint being sent to the respondent who responded back, but not because of a preparation by an attorney.

(3) If the reasonable cause finding was issued and certified for hearing, or moved into district court, lawyers were involved at that point.

Mr. Meloy said until #3, the only cost was the time of both parties.

SEN. FRED THOMAS asked how many days a month the Commission met.

Pat Echart said every other month for about two days.

SEN. THOMAS asked what was done at these meetings.

Ms. Echart said they dealt with cases at different levels, and if cases were dismissed, complainants or respondents could object to the dismissal. At that point HRC would have to act, and if the

Commission found there was no reason for the parties to stay in the hearing process, it would have to end; however, if the decision was reversed, it would go back into the process and into a hearing, and if it went into an appeal, it would come to the Commission for a final order.

SEN. THOMAS asked about how many cases were passed at each of those meetings.

Ms. Echart said an average of six cases.

SEN. THOMAS asked if all aspects of the meetings were open to the public and was told they were.

SEN. THOMAS asked if the Commission was directly involved in running the Human Rights organization on a day-to-day basis.

Pat Echart said on a day-to-day basis the Commission was operated by an administrator but the job of supervising the Commission was complicated. The method used in the Flathead cases was beyond the Commission's ability to understand at the time; however, they learned from the mistakes and felt they could recommend procedure, protocol and processes which would alleviate something like that from happening again. She said they were capable of managing the five staff, and keeping abreast of the current needs and issues was doable.

SEN. SUE BARTLETT asked for clarification of **Jamie Neer's** testimony.

Jamie Neer said the only reason he opened the thing up was to see if the average person could make a change in the system; however, it had become blown out of shape. He explained to have the Human Rights come representing another lawyer who was close friends with the person who ran Human Rights, for something he felt strongly in, his friend Jack gave the committee a newspaper article on him. This whole case started out, and he got called out on the carpet on it, when he was told not to bring up sexual orientation in any way, shape or form, and he didn't think he did; however, the case started out as a male against a male. His employee came to him and said he was bringing something to his attention, saying if he didn't do something about it, the employee would sue him for his house, car and whole shop.

Mr. Neer said the employee had never done anything to earn anything in his whole life; yet, the Human Rights was defending the employee as if he was poor and downtrodden. He maintained Mr. Kelly waived in his favor, saying the employee had gone beyond his bounds in threatening him with legal action.

He reminded the committee the incident started out with sexual misconduct between two male employees, one of who was gone; however, the employee who brought it to his attention had been

written up on several occasions with the education from the state who helped him design a procedural handbook.

Mr. Neer said when he presented the handbook to the Human Rights they wanted to know if it was notarized. He stated the venue changed from sexual orientation to whether the individual's rights were protected by the Human Rights and that was why the case was going to district court. He maintained he had done nothing wrong but try to protect himself, his family and his business.

SEN. BARTLETT stressed she was trying to clarify in her mind whether the earlier incident involved the same people as the one a month earlier.

Mr. Neer said they weren't the same; he was trying to tell the committee employees knew their rights but employers didn't know theirs.

SEN. SUE BARTLETT asked if it was the intent to change the process the Human Rights Commission used to the point they would no longer be recognized to be eligible to conduct a joint investigation by federal agencies, i.e. two processes would be necessary.

David Owen said it wasn't, but there were disagreements regarding the citations and those would have to be sorted out. He said he was trying to listen carefully on the employment side so something worse was not created; it was frustrating to both him and his board to feel they had such limited ability to affect that contract.

SEN. BARTLETT asked if the contract was between the EEOC and the Human Rights Commission. **Mr. Owen** said it was.

SEN. BARTLETT asked **Mr. Owen** if he was willing to talk to the Human Rights Commission about the proposed amendments.

David Owen said they were and the Chamber's goal all along had been to try to find some answers and something that works better.

SEN. FRED THOMAS asked if the Commission was involved in the discussed ongoing activity.

Pat Echart said it was before the initial letter went out, the staff briefed them on what had been found and the requirements of the law were discussed; however, they weren't "on the same page" when it came to how that would be transmitted to the people concerned.

She explained their staff thought there were a lot of parties involved and certain factors that influenced the situation. Every time they would meet to deal with one aspect, it seemed things were moving toward conciliation and agreement; in fact,

there were proposals from the realtors which were studied and accepted and workshops in Helena and Kalispell which many realtors and her staff attended.

Most of the time, along the way, they felt even though they got off to a bad start, they were working toward the goal of resolving the issue through terms which would improve the relations among them, the Homeowners' Association and community to make the properties available for families.

SEN. STEVE BENEDICT asked if there was a financial incentive for anyone in the Human Rights Commission or Department itself to settle cases.

Ann McIntyre said there was none.

SEN. BENEDICT referred to a letter signed by **Ms. McIntyre** which indicated the Commission invited a party to participate in a voluntary resolution as a preferable alternative to litigation. At a minimum, the party was required to put an end to the practice of listing and selling properties with restrictive covenants which had the effect of unlawfully restricting occupancy on the basis of familial status, compensate any identified injured parties, establish an affirmative marketing program and impose a meaningful civil penalty. He wondered what was voluntary about the letter.

Ms. McIntyre said it was voluntary as an alternative to litigation. The Commission was charged with enforcing the laws involved in the situation and felt a fairly clear and overt violation occurred. It was appropriate to seek the enforcement of the law in a legal proceeding, if necessary; however, it was also appropriate to try to resolve the case prior to filing the complaint.

SEN. BENEDICT said previous testimony indicated mistakes were made in Kalispell; yet, this letter didn't have the tone of a Commission that made mistakes.

Ann McIntyre said the letter he read was considered a mistake because of its tone.

CHAIRMAN TOM KEATING asked **Ms. McIntyre** how many lawyers were on her staff and was told there were three, one was counsel to the Commission, one served as the hearing examiner and one who worked on special projects funded by HUD; however, that position expired at the end of June. Also, several of the investigators were attorneys, but currently they were not working in that capacity.

CHAIRMAN KEATING asked the meaning of "investigator" and **Ms. McIntyre** said when complaints were filed with the Commission, it was charged with conducting the investigation.

CHAIRMAN KEATING asked if they were referred to as "staff."

Ann McIntyre said some were investigators, some were attorneys and some were support staff.

CHAIRMAN KEATING asked if non-lawyers were involved in the informal hearing.

Ms. McIntyre said non-lawyers were also investigators.

CHAIRMAN KEATING asked if both the lawyers and non-lawyers conducted the informal hearings, depending on who was assigned the case.

Ann McIntyre said the case was assigned for investigation, which was the informal process and not typically a hearing, though at times the investigator might convene a fact-finding conference which would bring the parties together.

CHAIRMAN KEATING asked if the claimant and respondent were brought together, face-to-face, and if the investigator heard both sides of the issue.

Ms. McIntyre answered in the affirmative to both questions.

CHAIRMAN KEATING then asked what the investigator did with the material and was told the investigator would take the information given by both parties but could decide it was necessary to gather additional information from witnesses and/or those who had knowledge of the complaint; however, once the investigation was completed, the investigator would write a report and make an investigative finding.

CHAIRMAN KEATING asked if at that point the respondent was notified by mail to inform there was reasonable cause and they would be charged.

Ms. McIntyre said the respondent was notified by mail of the finding and the Commission attempted to resolve the case through a conciliation process to try resolution.

CHAIRMAN KEATING asked who in the organization did that and was told an investigator who had not been involved with the case did. Also, if at that point the conciliation was not successful, it was certified for a contested case hearing (formal hearing process).

CHAIRMAN KEATING asked why some cases took four or five years.

Ms. McIntyre said the Commission historically had fewer resources than were needed to adequately do the job; it seemed as the number of staff increased, so did the workload.

CHAIRMAN KEATING asked if either party could go to District Court if the decision was unsatisfactory.

Ann McIntyre said they could.

CHAIRMAN KEATING asked if the Civil Rights Law as applied in these cases definitive and objective or was it subjective to interpretation. David Owen said he feared there was room for it to be subjective, explaining even though an attempt had been made to write Human Rights law as black-and-white, there was room for maneuverability, which made it rife for this type of frustration.

{Tape: 5; Side: A; Approx. Time Count: 8:42 p.m.}

Closing by Sponsor:

SEN. WALTER MCNUTT said there was a problem which was demonstrated through phone calls, cards and letters to different legislators. It seemed it revolved around procedure and function and misunderstanding regarding the way the Commission did things, which was contrary to what lay people in the civil and criminal area were used to. He was pleased to hear Pat Echart say they offered amendments to SB 350 and apologized for the lateness of the bill.

SEN. MCNUTT said one of the reasons for the lateness was he invited the Commission to bring him the amendments so they could be addressed before the committee got them. He didn't get them and time ran out; however, he was encouraged they were at a point where maybe SB 350 was not the best bill in the world. He affirmed the issue needed to be addressed because it had been festering for far too many years and all people of Montana deserved human rights and not abuses. He said it seemed the program had gotten "out of whack" but they admitted to it; he hoped they could go on and come out of this with a good bill to get some things resolved which would remove some of the mystique.

SEN. MCNUTT felt the public was not educated enough and perhaps if they were, a lot of this would go away.

Montana Human Rights Commission

Procedural Problems Waste Time and Money for Montana Business

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 8

DATE 2-18-97

BILL NO. SB 350

Changes are needed in the procedures of the Montana Human Rights Commission and keeping the Montana Human Rights Commission (HRC) a state agency is a good idea for Montana business. It is not our intention to destroy the Human Rights Commission—although many would like to do just that, either through statutory changes or simply not appropriating funds to the commission. Because the federal government would simply step in, we do not purport elimination as a good idea. What we propose are sensible changes that will make the HRC operate effectively in meeting its mission with regard to discrimination while treating Montana businesses fairly and more impartially in the process.

Discrimination and violation of civil rights is a serious matter. Those who violate the law should be prosecuted and fined. Continuing to provide protection of individual rights while balancing the rights of Montana businesses is an important objective of the legislation being introduced by Sen. McNutt (R-Sidney).

The Montana Chamber supports the following legislation:

Legislative Intent

Setting a clear legislative directive for fairness and impartiality should be part of Montana law. The legislation proposed, sets forth it is the intent of the Legislature that the HRC sit in independent judgment of alleged discrimination complaints, and the HRC maintain the highest standards of objectivity and impartiality in the investigation of alleged discrimination in Montana. While investigation of discrimination in Montana is of utmost importance to protect minorities and others from harm, businesses that are the subject of alleged complaints also have rights. Rights relating to the due process of law are also important.

Subpoena Power

Legislation to eliminate the ability for HRC to delegate subpoena power to its staff is proposed. At a minimum, the staff should be required to show good cause why a subpoena should be granted. Providing the commission, rather than the staff, has subpoena power, prompts a system of checks and balances. Minimum protections such as these are ordinarily expected to provide the accused some level of protection.

Rules of Procedure

Legislation to propose HRC procedural and substantive rules comply with the Montana Rules of Civil Procedure and the Montana Rules of Evidence is also being considered. Adoption of this language requires HRC rules to contain the same protections as the rules which courts apply to cases brought for trial.

Filing A Complaint

The commission should respond to complaints filed

Exhibit # 8 SB 350
Booklet (Human Rights Commission)

The full exhibit is available from:

MT Historical Society Archives

225 North Roberts

P.O. Box 201201

Helena, MT 59620-1201

Phone # (406)444-4774

Employers have a right to be aware of and respond to any investigation into their affairs. Employers also have a right not to be condemned to administrative hearings unless evidence indicates discrimination exists. The standard in civil matters is "a preponderance of the evidence." Such a standard is appropriate in matters relating to the commission as well, due to the seriousness of the matters alleged, and the costs involved in proper adjudication of the allegation.

Presence of Complainant

Those who bring complaints before the HRC should be present at proceedings. This allows issues to be fully aired and the accused has an opportunity to, at least, face their accuser. This is a fundamental right in a normal adjudicatory process.

Collection of Fines

The HRC should not be permitted to collect and keep the fines it decides to impose. This leads to a situation whereby the HRC has too much incentive to impose fines. Impartiality and sensibility can fall victim to staff more interested in continued funding than imposing proper fines based upon circumstance and law. ■

George Curtis Devoe

Attorney & Counselor at Law

310 North Higgins Avenue, Suite 2

Missoula, Montana 59802

(406) 721-2821

EXHIBIT NO. 9

DATE 2-18-97

BILL NO. SB 350

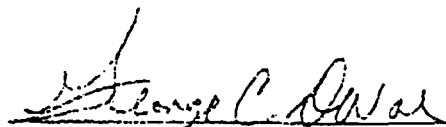
TO: Honorable Senator Walter McNutt
FAX: (406) 444-4718
RE: Senate Bill 350
DATE: February 18, 1997

Senator McNutt:

The written testimony in support of your bill number 350 follows. I would greatly appreciate any information you can give me about how to help this bill get passed into law. If there is anyone I can contact, if there is anything I can do, or if it would help for me to testify before any house hearings please let me know.

Thank you for taking the time to return my call on this matter.

Sincerely


George C. DeVoe

TO: Honorable Senator Walter McNutt
FAX: (406) 444-4718
RE: Senate Bill 350
DATE: February 18, 1997

Senator McNutt:

Pursuant to our conversation I am sending you the following information regarding a case with the Human Rights Commission in Missoula, Montana.

Mr. Clayton DeVoe owns approximately 100 apartment units in Missoula. Mr. DeVoe has owned these apartments for over twenty-five years - over 4,000 tenants - and there has never been one single discrimination complaint filed against Mr. DeVoe by any past, present, or prospective tenant.

Without one single signed complaint from any tenant or prospective tenant, the Montana Human Rights Commission along with Concerned Citizens Coalition instigated a sting operation and Mr. DeVoe has been involved in ongoing litigation with the HRC since 1993. In February, 1993 Clayton DeVoe received notice from the Human Rights Commission (HRC) that a housing discrimination complaint had been filed against him by a group called Concerned Citizens Coalition (CCC now Western Montana Fair Housing here in Missoula).

On March 31, 1993 the Human Rights Commission investigator, Andrea Strowd, held a "fact finding" hearing in Missoula. At that hearing the representative from CCC, Susan Fifield, claimed that they ran "TESTS" on Mr. DeVoe which showed that he discriminated against families. I represented Mr. DeVoe at that hearing. I was shocked to hear that the "testing" group was willing to "settle" the matter for approximately \$8,000.00. If Mr. DeVoe was willing to pay that amount, there would be no further investigation, and no further proceedings concerning the complaint.

When Mr. DeVoe refused to pay this blackmail money, the HRC investigator began her investigation which began with a subpoena of all of Mr. DeVoe's rental records from 1991 through 1993. There was no connection whatever between these records and the facts alleged by CCC which were that Mr. DeVoe had discriminated during tests which allegedly occurred in February and June of 1992. Nevertheless, the subpoena was issued and Mr. DeVoe was forced to spend hundreds of hours and thousands of dollars in gathering rental records in response to the subpoena.

In 1994 this same "testing" group filed three additional complaints against Mr. DeVoe which in turn started a completely new investigation by the same HRC investigator. These complaints alleged that Mr. DeVoe discriminated against an african american, an asian american, and a single mother with a child, all on the same day in 1994. This new investigation by the HRC required Mr.

DeVoe to produce additional rental records for the years following 1993, costing him thousands of additional dollars.

The HRC investigator came to Missoula and spent 2 days going through Mr. DeVoe's rental records and also spoke with several of Mr. DeVoe's current and past employees, whose names and whereabouts were subpoenaed by the investigator from Mr. DeVoe. Ultimately, the investigator dismissed the three complaints filed in 1994 for lack of evidence. The fact was that it turned out that the apartments which the testers claimed they were shown during the tests were not even available at the time - they were occupied. Nor were there any other apartments available at the time - there was a waiting list. The investigator's final report on the alleged 1992 complaints found that Mr. DeVoe's rental records did not show discrimination against families and then went on to find that "based upon the statements of the employees" there was reason to believe there was discrimination. The report contained several pages of information which the investigator claimed she was told by the employees. I personally contacted those employees, none of whom were working for Mr. DeVoe by that time, and met with them concerning the report. I was able to obtain a sworn affidavit from each of those employees stating numerous instances where the HRC investigator lied in her report as to what the employee had told her. The employees claimed that the investigator both misrepresented what they had told the investigator, as well as making statements that they never told the investigator.

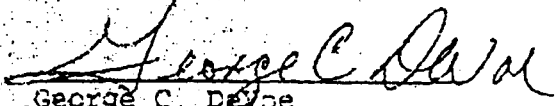
In the end, Mr. DeVoe exercised his right to have the matter withdrawn from the HRC system and put into District Court. Prior to that time the HRC had denied Mr. DeVoe access to any information regarding the identity of the testers, who they spoke with at Mr. DeVoe's office, and what they said, if they were denied etc. It was only through the discovery process available in the District Court that the astounding facts were revealed that: (1) there had never been a single discrimination complaint filed by any prospective or actual tenant of Mr. DeVoe's - he has had over 4,000 tenants in the past twenty-five years and over 10,000 rental inquiries since this all began in 1993; (2) the HRC investigator testified under oath that the testing data she was given by the testing group was inconclusive - Mr. DeVoe's rental records did not show discrimination - that the investigator lied in her official report about what she was told by Mr. DeVoe's employees and purposefully misrepresented their statements to make it appear that there was discrimination by Mr. DeVoe; (3) that the representative from the testing group testified under oath that one of the tactics they use is to file complaints with the HRC in order to have the commission come down on landlords using these overly burdensome and gastapo-like investigations, knowing that the majority of landlords will buckle under the pressure and pay them money to go away; (4) that all of this can be started by a testing group based upon an "anonymous tip" from someone the group doesn't know, and does not ever verify before beginning testing; (5) that the HRC investigator never

once actually talked to the "testers" in this case, never verified the information in the complaints filed by testing group.

You stated to me that your bill was designed to fix the system. It would go a long way toward accomplishing that, and I wholeheartedly support the bill. I would also like to point out that the personnel from these testing groups are entrenched with the HRC staff. They know one another personally on an ongoing basis. The way the system works is that HRC personnel take the information submitted by the testing groups as true on its face without ever verifying it; and based on this unverified - usually unverifiable - information, set out on these alleged investigations and if the target doesn't pay the blackmail money to make the investigation go away, the HRC turns into something akin to the German Gestapo, since they have full subpoena powers which most lay-people know nothing about. It would be a great improvement in the system if the HRC staff had to go before a district court judge and prove that the information they are asking for is relevant and material to the issues alleged, before a subpoena could be issued.

If there is anything I can do to help you get this bill passed please contact me.

Thank You


George C. DeWee
Attorney at Law
310 North Higgins
Missoula, Mt. 59802

HUMAN RIGHTS COMMISSION

MARC RACICOT, GOVERNOR

P.O. BOX 1723

STATE OF MONTANA

PHONE: (406) 444-2884
(406) 444-2798
(406) 444-0532

HELENA, MONTANA 59624-1723

May 16, 1995

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 10

DATE 2-18-97

BILL NO. SB 350

Kalispell MT. 59901

De

The Montana Human Rights Commission staff has recently completed an investigation of real estate transactions involving several subdivisions in Flathead County which limit occupancy by families with children through restrictive covenants, in violation of both the Montana Human Rights Act and the Civil Rights Act of 1968, as amended. Commission staff have identified you as having listed one or more of these properties for sale, and represented it to the public subject to the unlawful restrictions.

In particular, in response to your listings of property for sale in Fairway Boulevard Townhomes, Glacier Village Greens and Forrest Hills, Commission staff contacted your office for information about the listings and were told that covenants prevented occupancy by children.

As a result of our investigation, the Montana Human Rights Commission has found reasonable cause to believe that you, along with others in Flathead County, are engaged in a pattern or practice in violation of § 49-2-305, MCA, and that the matter is one of public importance. The Commission has authorized enforcement proceedings, including litigation if necessary, under § 49-2-510(7), MCA. The Commission intends to seek relief to correct the discriminatory practice, to rectify any harm to persons discriminated against, to prescribe conditions for future conduct of those involved, to require reports on the manner of compliance and to assess civil penalties against each respondent in an amount not exceeding \$50,000 for a first violation.

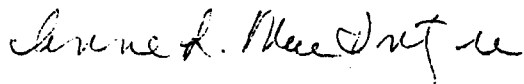
As a preferable alternative to litigation, the Commission invites you to participate in a voluntary resolution of this matter. At a minimum, such a resolution must (1) effectively put an end to the practice of listing and selling properties with restrictive covenants which have the effect of unlawfully restricting occupancy by on the basis of familial

May 16, 1995
page 2

status, (2) compensate any identified injured parties, (3) establish an affirmative marketing program to correct the effects of past discrimination, and (4) impose a meaningful civil penalty, proportionate to the violation.

You are requested to contact Ric Moser, compliance officer, at (406) 444-4232, or Kathy Helland, compliance officer, at (406) 444-4344 to discuss this matter further. If you are aware of any information which contradicts the information outlined above, or which otherwise absolves you in this investigation, please inform the compliance officer so that a full and fair investigation of the exculpatory information can be undertaken promptly.

Sincerely,



Anne L. MacIntyre
Administrator

Due Process

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11
DATE 2-18-97
BILL NO. SB 350

- I. **Definition of due process**
- II. **Importance of due process to Code enforcement**
- III. **Elements of due process**
 - A. Notice of charges
 - B. Adequate time to prepare a defense
 - C. Opportunity to hear testimony and cross-examine those testifying against you
 - D. Opportunity to present your side of the story
 - E. Right to legal counsel
 - F. Right to have matter decided by an impartial body
 - G. Appropriate sanctions
 - H. Availability of appeal

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Administrator defends human rights agency

■ Official disputes claims by Realtor

By CHERY SABOL
The Daily Inter Lake

Anne MacIntyre, Human Rights Commission administrator, has taken issue with recent comments on fair housing by a spokesperson for local Realtors.

A Sunday story in The Daily Inter Lake recounted complaints about the commission's enforcement of the fair-housing act, quoting Kathy Schulte, executive director of the Flathead Board of Realtors.

MacIntyre said reading Schulte's comments "was disheartening. I thought we had figured out a way to resolve these kinds of things."

She disputed Schulte's figures on how many housing cases were initiated by people who complained and how many were opened by commission staff members. MacIntyre said that of 110 cases open in Montana as of Dec. 31, 103 were initiated by people claiming injury or discrimination in their quest for a home to buy or rent.

The other seven were filed by staff in an investigation in which they already had "direct evidence" of illegal policies by real-estate agents or others, said MacIntyre.

There was "no team of investigators" in Kalispell recently, trying to catch Realtors using the term "quiet" to describe a property or neighborhood, she said.

Rather, there were staff members here to oversee a settlement in a recent case.

"The commission staff never said it considers it to be a violation" to use the description "quiet," she said. "(Schulte) read something more into the situation that wasn't really there."

MacIntyre also disputed Schulte's allegation that commission staff members have no training.

And she argued that anti-discrimination training of Realtors was not "poorly done" or "poorly done" as evidenced by the commission's recent Flathead real-estate

The commission does not do "pairs testing" to see if people of different race or economic status or family makeup are treated differently, MacIntyre said. Except for a study it did in the 1980s, the commission simply makes phone contact with real-estate agents if there's evidence of discrimination. An investigator may pose as an interested buyer on the phone, she said.

If an agent is found to violate the fair-housing law, he or she has complete access to due process to challenge the accusation, MacIntyre said, adding that it is spelled out in Montana law.

As in civil cases, most matters are settled before they reach a trial, she noted.

A discrimination case against an agent is processed in an average of 14.6 months after being filed, MacIntyre said. Schulte had said the process could drag on for 60 months. MacIntyre agreed that it's possible, though unlikely.

Settlement Agreement
between
Montana Human Rights Commission
and Northwest Montana Association
of Realtors, Inc.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 13
DATE 2-18-97
BILL NO. SB 350

This Settlement Agreement is between the parties identified below. The Parties agree as follows:

1. Parties. The parties to this Settlement Agreement are as follows:

a. Montana Human Rights Commission (HRC), an administrative agency of the State of Montana, charged with enforcing the Montana Human Rights Act, Section 49-2-101 et seq., MCA.

b. Northwest Montana Association of Realtors, Inc., a Montana corporation, formerly known as Flathead Board of Realtors, Inc. (NMAR).

c. Northwest Montana Association of Realtors, Multiple Listing Service, Inc., a Montana corporation, formerly known as Flathead Board of Realtors, Multiple Listing Service, Inc. (NMAR-MLS) which is a wholly owned subsidiary of NMAR.

d. Those real estate firms identified on the attached Exhibit "B" (Real Estate Firms), and

e. Those licensed real estate brokers and salespersons identified on the attached Exhibit "B" (Brokers and Salespersons).

NMAR, NMAR-MLS, the Real Estate Firms, and the Brokers and Salespersons are together referred to as the "Settling Parties."

2. Controversy. The HRC believes that the Settling Parties have engaged in a pattern and practice of discrimination on the basis of familial status and age in the sale or advertising of housing accommodations in real estate developments known as Fairway

Boulevard Townhomes, Rawling Mobilehome Village, and/or Glacier Village Greens, Flathead County, Montana, in violation of the Montana Human Rights Act. The Settling Parties do not believe that they have engaged in any such discriminatory practices. This Agreement does not constitute an admission or finding that the Settling Parties have violated the Montana Human Rights Act. As of the date of this Agreement, no complaint has been filed by or on behalf of any person claiming to be aggrieved by and discriminatory practice of the Settling Parties. The parties have entered into this Agreement as a compromise, solely to resolve the disputed matter without further legal proceedings, and without further expenditure of funds and commitment of resources in litigation. Entering into this Settlement Agreement shall not be construed as an admission by any party that the claims of the other party are true. The parties recognize that by entering this agreement, the issues of fact and law will not be adjudicated, but agree that the public interest is best served by devoting available energy and resources to the achievement of the fair housing goals shared by all parties. The parties agree to take the following actions in full settlement of the present controversy.

3. NMAR and NMAR-MLS. NMAR and NMAR-MLS agree to do the following:

a. For the period from January 1, 1996 until January 1, 1997, NMAR and NMAR-MLS shall conduct a word search by computer of the listing information in its computer database for potentially discriminatory language which may indicate the presence of discrimination on the basis of age or familial status as defined by Section 49-2-305(12), MCA. The searches shall be conducted twice each month. A search will be conducted shortly before the data is transmitted to the printer for printing of the NMAR-MLS book. If the NMAR or NMAR-MLS finds language in a listing that may indicate such discrimination, through the search process or otherwise, the NMAR or NMAR-MLS shall bring the potential

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 14
DATE 2-18-97
BILL NO. SB 350

Senate Committee Testimony
from
Carole Phillips

My name is Carole Phillips, I own a Bookkeeping/Accounting business in Kalispell and I became acquainted with the Montana Human Rights Commission and their methods of operation when I assisted two of my clients in resolving their cases with the Commission. The very first notification from the Commission to my clients, both subdivision developments, that there was a problem with their covenants, came in the form of a threat of a \$50,000 fine. (Attached exhibit A) The Commission never mentions that restrictive covenants are not necessarily in violation. There are exemptions allowed when providing housing for older persons but they don't offer that as a possibility.

These developers and homeowners were unaware that Montana law had changed in 1989 requiring subdivisions, that restricted occupancy of children, to qualify for this special exemption. Even though the Chairman of the Montana Human Rights Commission lives in Kalispell, Flathead County officials and County Planners were also unaware of the change because the county continued to review and approve restrictive covenants until they were also notified, in threatening form, by the Montana Human Rights Commission. Some of the lots were listed by local Real Estate Agents, who were also threatened. Collectively we became known as the "Flathead 23". These threatening letters were mailed to people on approximately May 16, 1995 by the Montana Human Rights Commission with no prior notice of a problem, attempts to education, or requests for correction of the restrictive covenants. Also, it is important to note that there had been no complaints filed by anyone and this was a situation the MHRC

staff had accidentally uncovered in the course of doing research in Flathead County.

Upon receipt of the threat, one of my clients, Glacier Village Greens, Inc., believed that immediate change of the covenants to remove the restriction was needed. This covenant amendment was submitted to the Flathead County Commissioners at the end of July 1995 for their final approval. Also, advertising containing the word "Adult" was immediately changed and property was open to purchase and occupancy by persons of any age. The supposed violation had been cured in just a few months without the need for any further expenditure of Commission money or manpower.

However, removing the age restriction and thereby eliminating the supposed violation was not enough for the Montana Human Rights Commission. They wanted punishment! They wanted to make an example of someone! Thus began another year of trying to jump through the Commission's hoops. This required extensive hours of manpower and money for both my client and the taxpayers. We never knew where we were in the process. The Commission wouldn't notify us when we were to be discussed at meetings.

In June of 1995 Paulette Kohman, a staff attorney for the Montana Human Rights Commission, met with some of my clients. I was present at that meeting. They asked her what constituted "Significant" facilities and services when qualifying for an exemption. She responded that those had not been specifically adopted yet. The law had been on the books since 1989! We were supposed to comply with a law that they couldn't even give us the specific qualifications for.

Paulette Kohman gave out information after a public meeting in November 1995 about what it took to qualify for the exemption. However, when we submitted evidence of our qualifications using

the guidelines of her information, the Commission report cited case law which disputed their own information.

I contacted Ann McIntyre personally in December of 1995 to find out what the specific qualifications for the exemption were and if you had to actually register or obtain approval from any agency for the exemption. She was very uncooperative and just kept telling me to contact a local attorney. My second call to her was never returned.

At the Commission meeting held in Kalispell in February 1996 I once again asked for information on how to qualify and was grudgingly given some printed material. They indicated that helping developments to qualify was not their focus. At that time I complained that they had all this money to go after us if we made a mistake but they didn't allocate any resources to help us do it right! At this same meeting, Ann McIntyre used very inflammatory remarks about Glacier Village Greens and referred to the restriction as "Notorious Policies". She also said that signs for the development that referred to it as "An Adult Recreational Community" were analogous to the signs in the old days of "No Dogs or Indians Allowed!".

They taped interviews with myself and some of the officers of Glacier Village Greens, Inc. under the pretext of seeing if we qualified for an exemption. They used our naive willingness to cooperate as the source of building a 1000+ page case against us. (Exhibit B) Every time we submitted information for their consideration, they just wanted more. They even requested all of our attorney's billing records in violation of our attorney-client privilege.

At one point the Commission sent letters to all of the property owners at Glacier Village Greens offering to assist them in taking action against the corporation.

There were numerous abuses of our rights in this whole process and finally in July 1996, Glacier Village Greens, Inc. filed a complaint in Flathead District Court against the Montana Human Rights Commission. It charges that:

COUNT ONE - On numerous occasions the Plaintiffs' rights to **Public Participation** were violated as outlined under Article II, Section 8 of the Montana Constitution and Montana's Public Participation Act.

COUNT TWO - The Montana Human Rights Commission violated Article II, Section 9 of the Montana Constitution and the Montana Public Records Act in denying the Plaintiffs' **right to know** by denying copies of documents.

COUNT THREE - The Montana Human Rights Commission's conduct violated Plaintiffs' right to **due process** of law under the Montana and United States Constitutions.

This complaint is still pending. The Commission was given the opportunity to settle it. Adoption of policies and procedures that safeguarded the public's rights were what was being asked for. However, the Commission chose to leave this suit outstanding.

I am an independent business person, engaged by a client with duties that included helping with the Human Rights settlement. The Commission drew me in and personally I had to submit to a visit and photographing of my office, which is in my home. I was questioned about what equipment I owned, who had purchased it, who were all of my clients and what I charged for my services. Finally, I was personally named in a suit brought by the Montana Human Rights Commission even though they had no evidence that I ever discriminated against anyone. Eventually they dismissed the

suit.

It is my understanding that the last of the Flathead cases was settled this month, after nearly two years of struggle. Glacier Village Greens' case was settled last October but they are required to submit reports to the Commission, for their review, through January 1, 2000. Thereby, creating continued work for the Commission staff.

In the end it has cost Glacier Village Greens, Inc. over \$20,000 in legal fees, over \$24,000 in remedial actions required in their "settlement", killed lot sales during the period, and terrified many senior citizen homeowners with threats of \$50,000 in fines! The costs to Glacier Village Greens, Inc. were tens of thousands of dollars more than that required of any of the other parties in Flathead county. The subdivision's homeowners' park will have another \$5000 in improvements even though \$20,000 was already spent to create it 2 years ago, the homeowners' don't necessarily want the improvements, and other subdivisions aren't required to have playgrounds. \$4000 will be spend on the facilities at the Golf Course's Pro Shop & Deli to improve handicap accessibility although the buildings were built to City of Kalispell building codes in 1992 & 1993. The state will received no money and no families with children have chosen to purchase a home in the subdivision even though they have been welcome since fall 1995.

I wonder if the staff members of the Montana Human Rights Commission are the only ones who won in this case? They created work for themselves and kept themselves employed! It seems to me this is an agency with too much time and money on their hands when they have to embark on witch-hunts even when they aren't investigating a complaint. Something needs to be done about these powers given to the Montana Human Rights Commission. They shouldn't have a free hand to act as the judge, the jury, and the "executioner"! Cases were settled in Flathead county because it

seemed impossible to fight an organization full of lawyers looking to justify their existence. The system is broken...It needs to be fixed.



HUMAN RIGHTS COMMISSION

MARC RACICOT, GOVERNOR

P.O. BOX 1728

STATE OF MONTANA

TELEPHONE: (406) 444-2884
FAX: (406) 444-2798
TDD: (406) 444-0532

HELENA, MONTANA 59624-1728

May 16, 1995

George E. Schulze, President
Glacier Village Greens, Inc.
357 West Evergreen Drive
Kalispell, MT 59901

Dear Mr. Schulze:

The Montana Human Rights Commission staff has recently completed an investigation of real estate transactions involving several subdivisions in Flathead County which limit occupancy by families with children through restrictive covenants, in violation of both the Montana Human Rights Act and the federal Fair Housing Act. Commission staff have identified you as president of Glacier Village Greens, Inc., the developer of Glacier Village Greens, a subdivision which has restrictive covenants prohibiting occupancy by children under 17 years of age.

Phase I of the development, approved in 1988, contains no restrictions on occupancy by children, but Phase II, filed in 1991, contains the following covenant:

ADULT OCCUPANCY ONLY: The subdivision has been designed to be a residential area for adult residents only and no person shall occupy any residence or lot therein who is less than 17 years of age; provided, however, that this restriction shall not prevent visits by persons who are younger than age 17 and who are relatives or friends of homeowners, if such visits are of less than 14 days duration and do not total more than 28 days in any calendar year. The word "occupy", for purposes of this restriction, shall mean: to be present in person at any resident or lot, except for a visit of less than two hours duration, with a frequency of more than four days in any week.

All subsequent phases of the development have been subject to the same restrictive covenant. In addition, Glacier Village Greens has openly advertised its "adult" status, both on-location and in the local telephone directory, and benefitted from the "adults-only" restriction in obtaining subdivision approval without addressing concerns about impact of unrestricted development on schools, transportation, sidewalk construction, and sewage treatment.

As a result of our investigation, the Montana Human Rights Commission has found reasonable cause to believe that you, along with others in Flathead County, are engaged

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§49-2-305(10), Investigative Report dated 5/31/96

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SENATE COMMITTEE ON GOVERNMENT
EXHIBIT NO. 15
DATE 2-15-97
BILL NO. SB 350

TESTIMONY ON SB 350
Submitted by Candace Torgerson
Lobbyist for MONTANA RETAIL ASSOCIATION.

MY NAME IS CANDACE TORGERSON FROM HELENA, AND I AM HERE ON BEHALF OF THE MONTANA RETAIL ASSOCIATION. WE SUPPORT THE PROPOSED REVISIONS TO THE LAWS RELATING TO THE MONTANA HUMAN RIGHTS COMMISSION CONTAINED IN SB 350.

WHILE OUR ASSOCIATION RECOGNIZES THAT ISSUES OF DISCRIMINATION AND VIOLATIONS OF CIVIL RIGHTS ARE SERIOUS MATTERS WHICH DESERVE APPROPRIATE PROTECTION, WE ALSO INSIST THAT BUSINESS OWNERS ARE ENTITLED TO PROTECTION OF THEIR RIGHTS AS WELL.

UNDER CURRENT PROCEDURES, THE COMMISSION IS THE JUDGE, JURY, PROSECUTOR AND HANGMAN. IT IS IMPORTANT TO SEPARATE OUT SOME OF THESE POWERS FOR THE PROTECTION OF JUSTICE. THERE NEEDS TO BE A BALANCE TO THE PROCESS THAT WILL PROVIDE AN UNBIASED APPROACH TO THE COMMISSION'S INVESTIGATION OF DISCRIMINATION CHARGES. THAT BALANCE SHOULD PROVIDE THE ACCUSED EMPLOYER WITH AN ADEQUATE LEVEL OF PROTECTION FROM THE POSSIBILITY OF AN OVERZEALOUS PROSECUTION.

ON BEHALF OF THE MONTANA RETAIL ASSOCIATION, I HOPE YOU WILL SUPPORT SB 350.

THANK YOU.

SB 350

ARTICLE NO. 16
DATE 2-18-97
BILL NO. SB 350

For the record my name is Dean Randash. I NAPA Auto Parts in Helena and East Helena.

I have been a Montana small business employer for the last 25 years. In that time Small Business has been subjected to so many laws and regulations that an "employer" no longer has any personal or individual rights left! This has never been more evident than in the methods and procedures used by the Human Rights Commission.

An individual that has an "employer status" is no longer allowed to be an individual, a human being with feelings and stresses and human frailties. The Human Rights Commission considers him a licensed entity of commerce permitted to function only so long as he complies absolutely with every perceived mandate of the Human Rights Commission.

If an employee alleges a complaint that is either real or contrived, but the complaint aligns with what the commission is looking for, the Commission becomes the employee's advocate. With the full weight and autonomy of the government, charges are levied against the employer for civil if not criminal discrimination violations. The employer once charged is guilty until he proves his innocence.

The small business employer is a mere human being that does a very good job at building a product or providing a service. He is not omnipotent regarding employer/employee relations or human relations. In spite of diligence in setting policy and over seeing personnel he can not control what employees say and do, yet the Human Rights Commission holds the employer totally responsible civilly and criminally. The only recourse against these alleged violations is to spend thousands of dollars in lawyer fees to prove one's innocence.

I submit to you that one alleged violation on the part of an employee doesn't prove that an employer has discriminated against or violated a employee's civil rights, let alone having done it with malicious and willful intent.

There needs to be a reining in of this autonomous agency. This agency needs to be accountable to the due processes of our democratic system. No longer can this commission be allowed to wield unaccountable tyranny that is subsequent to its filing the complaint, investigating the complaint, prosecuting the complaint, sitting in judgement of the complaint, levying the fines in punishment of its judgement of the complaint and utilizing the fine money to support its own administrative policies. For an employer to overcome this awesome power, often on limited resources, is an unrealistic and an unwarranted obstacle to a vital segment of our society, small business enterprise. Let's handle employee employer conflict resolution in a more balanced and civil manner.

Lets have due process for small business employers and employees - Support SB- 350.

Dean Randash - NAPA Auto Parts

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 17

DATE 2-18-97

BILL NO. SB 350

MONTANA ROSE AND FLORAL
P.O. BOX 951
ENNIS, MONTANA 59729

February 18, 1997

TO: LEGISLATIVE COMMITTEE
RE: SB 350 HUMAN RIGHTS COMMISSION

Montana Rose and Floral, Inc. is a small corporation in Ennis, MT and has a 50,000 sq.ft. greenhouse heated by geothermal heat on 45 acres. We grew roses exclusively from 1988 until 1996 when we were forced to shut down the business because the wholesale price of roses plummeted and management problems persisted.

In January of 1990, Robert Rice and I, both of whom are directors, met with our greenhouse manager about the rising costs of the business and the falling income from the roses because of poor quality and high labor costs.

The general manager had made his wife the quality control manager and another woman the production manager and then raised his wife's salary without the directors approval. The general manager was told he would have to rescind the salary raise, which he refused to do.

After the meeting the manager told his wife that Mr. Rice had made a sexist remark about a man and wife being in a position of management in the same company. Incidentally, I do not remember the remark being made. Mr. Rice never confronted the manager's wife, so what was related to her was strictly hearsay.

On March 16, 1990 the general manager, quality control manager, and the production manager were terminated. The reasons given were the severe financial problems of the company and the poor condition and quality control problems with the production and sales of the company roses. This serious action was necessary to prevent the financial collapse of the business.

The original complaint of discrimination was filed by the general manager's wife against Montana Rose & Floral, Inc. dated April 22, 1990. Montana Rose & Floral, Inc. responded to the complaint on May 8, 1990.

The complaint sat on someone's desk in the Human Rights Commission until July 24, 1995 when Mr. Rice was advised that the Commission had made a finding of reasonable cause with respect to the charging party's allegations of discrimination.

Montana Rose & Floral and Robert Rice have spent in excess of \$30,000 in attorney fees and settlement costs. The general manager's wife was paid \$9,000 to settle the case in lieu of spending an additional \$15,000 to \$20,000 to take it to court.

There is nothing we can do about what happened to us, but I do hope my testimony will insure that other companies are not threatened with and have to defend themselves against such frivolous lawsuits.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan Leadbetter".

Dan Leadbetter, President
Montana Rose & Floral

DL/dl

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 18
DATE 3-18-97
BILL NO. SB 350

ROBERT C. RICE
P. O. BOX 201
HARRISON, MONTANA 59735

February 18, 1997

TO: LEGISLATIVE COMMITTEE
RE: SB 350 HUMAN RIGHTS COMMISSION

Good afternoon, I am Diane Rice of Harrison, Montana, here to testify on behalf of my father-in-law Robert Rice.

You have just heard a summary of how this case was prolonged 6½ years. Throughout the entire investigation, Bob Rice had been singled out as the individual who had been discriminatory on the basis of gender and marital status. These were all false accusations. In fact, there are so many false claims and accusations in the final investigative report, it is ludicrous. Here is an example, and I quote directly from the report itself, "In August 1989, Rich MacMillan was hired as a delivery driver in a newly developed Idaho market area. He was paid \$1,625 monthly plus 15% commission on all sales of more than \$2,500 a week in his area. MacMillan was shown preferential treatment throughout his employment, making more than the female managers and refusing to take orders from them. Because he was the nephew of one of the business owners (Bob Rice), he also did not defer to the general manager." The facts are, Rich MacMillan was not just a delivery driver, he was the President of the Corporation, he was 5% stockholder, he was the original owner of a portion of the land, and he was the one that had done the initial leg-work for the project construction. Of course he was going to make more money and not take orders from these people. This was just one example of many. But this was never verified by the Human Rights Commission before drawing up their final investigative report determining probable cause.

In browsing through the volumes of legal paperwork concerning this case, and a random search of spontaneous notes written by Bob Rice to himself, concerning meetings, etc., never once was there any notation of concern about "women." There were, however, numerous notes all reiterating the main concerns of all the stockholders, "too many people, not making a profit, no more money available, too much dead weight, too many administrators." The company was losing money because the employees were not producing quality product. Of course these people would be fired, they weren't doing their jobs, they were offending customers, and the roses were being returned. This was not a matter of discrimination, the company could

not afford to pay people that were not producing.

On September 26, 1995, the attorney and accountant for the Montana Rose and Floral, Inc. went to meet with Mike Meloy, attorney for the claimant. Their motive was to try to reach a settlement, and also explain that Montana Rose and Floral's liabilities exceeded the assets of the corporation. Not only sale of the business at a greatly reduced price, but bankruptcy loomed as options, if a major judgement was rendered.

Because of this disclosure, it became apparent that Mr. Meloy had to find a Respondent with financial wherewithal to satisfy any potential judgement that may be rendered. Thus, on October 20, 1995, a motion was filed by the Claimant against Bob Rice individually, requiring him to hire an additional attorney, and go through more worry and stress. After almost a year of legal wrangling, and approximately \$7,000 more in legal fees, that issue was dropped.

The fact that the Human Rights Commission gave this entire process any credence whatsoever, is very puzzling. Quoting from the Case File Memorandum by Ric Moser on 9/13/93, Claimant states, "Husband saw many attorneys. At time we moved, attorney turned endeavor down. Attorneys wanted too much up front." Quite obviously, the only way this case was going to proceed was with the involvement and persistence of the Human Rights Commission.

This is a very sad commentary on our justice system when false accusations can be made against an innocent individual, the legal processes prolonged to the point that the person must finally settle the case, even though not guilty, just to stop the escalating legal expenses. This sets terrible precedents, and creates a bonanza for unscrupulous attorneys; and most of all, way too much power for agencies like the Human Rights Commission. Bureaucratic organizations like the Human Rights Commission will never be contained, they can only be eliminated. They thrive on an increasing caseload, thus justifying more funding, and then needing more cases. An insatiable monster that thrives on penalizing the most productive of Montana's citizens.

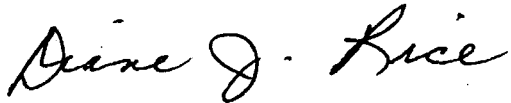
Who are these people? The employers, the people providing the jobs that run the economy in this state. There are eight less jobs in Ennis, Montana now, thanks to the Human Rights Commission. They were the final blow to the now closed business of Montana Rose and Floral.

Let's also take a look at Bob Rice, the man falsely accused. He has been in the ranching business and providing stable employment for people in Madison County for over 50 years. We all know the multiplier effect of agriculture to the economy. He has been paying his taxes

building schools, maintaining the roads, contributing positively every way he can. He has been hiring minorities, women, elderly, disabled, and teenage workers for 50 years. This is not a discriminatory man. He is one of the most generous men I've ever known. Bob Rice and Dan Leadbetter donated land for a golf course for Madison County. These are very good people. To malign their names with these false accusations is an atrocious disgrace.

You, the legislators, have the power and opportunity to remedy this situation. Please stop penalizing the most productive citizens, those who are providing Montana's jobs. If the Human Rights Commission is allowed to go unchecked, those jobs will be driven from Montana.

Thank you,

A handwritten signature in cursive script that reads "Diane J. Rice". The signature is written in dark ink and is positioned below the "Thank you," text.

Diane J. Rice

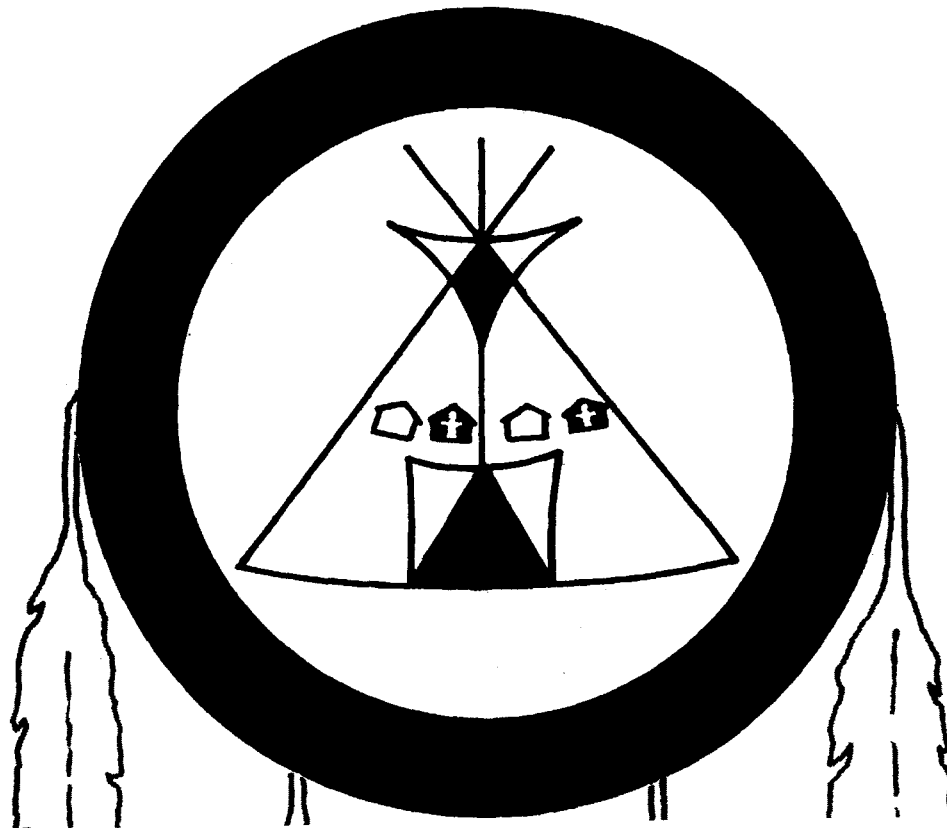
FAIR HOUSING

SENATE LABOR & EMPLOYMENT

FILE NO. 19

DATE 2-18-97

BILL NO. SB 350



MONTANA LAW PROHIBITS DISCRIMINATION IN HOUSING BECAUSE OF:

- RACE/COLOR
- SEX
- AGE/FAMILY STATUS
- RELIGION/CREED
- NATIONAL ORIGIN
- HANDICAP
- MARITAL STATUS

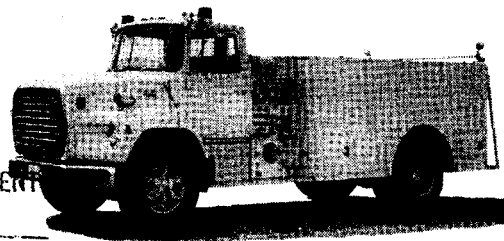
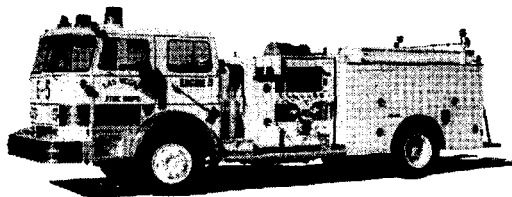
**IF YOU DON'T
REPORT DISCRIMINATION
IT CAN'T BE STOPPED.**

**MONTANA HUMAN RIGHTS COMMISSION
FAIR HOUSING ASSISTANCE PROGRAM
P.O. BOX 1728
HELENA, MT 59624
444-2884 1-800-542-0807**



Superior Fire Apparatus Co.

Factory and Offices
Joslyn and Leslie Street
Helena, Montana 59601
Phone (406) 442-0745



SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 20

DATE 2-18-97

BILL NO. SB350

November 12, 1996

Members of Montana Legislature Small Business Group

We have had several meetings during which the numerous problems facing small businesses throughout Montana, including the agricultural community, during which we have heard a great many cases and instances where small businesses are being harassed, intimidated, and even forced out of business as a result of Montana's current business climate. As we have heard, the majority of these problems involve governmental regulations, controls, government appointed quasi judicial boards, and "legal blackmail." The explanation: "legal blackmail," as we have heard consists of attorneys often accepting and/or encouraging clients with hypothetical charges or grievances against small businesses. Attorneys often proceed with such matters knowing full well that the average small business cannot afford to get involved in a court case or extended legal defenses and as a result often accept the plaintiffs' lawyers offer the settle for a given sum. The amount may arrange from \$5,000 to \$10,000.

Obviously the small business person finds themselves in a quandary because they cannot afford to engulf upon costly legal procedure, while they cannot afford repeated \$5,000 to \$10,000 tribute payments to lawyers and plaintiffs using often unfounded and at least unfair tactics. This method of harassing, intimidating, and extracting tribute from small business often results in the small business failing, ceasing operations, or downsizing to the point where several reputable, faithful, industrious employees are unemployed.

Those of us who have attended all previous meetings probably feel that enough complaints have been aired and it is a time for solutions. Therefore, I offer my opinions/recommendations for solutions to some of the many problems involving harassment, intimidation, and legal blackmail that is so prevalent in Montana's anti-business climate. During the many discussions that have taken place on these subjects, certain possible solutions were discussed and often found impractical. One of those being "looser pays" where court cases result as the small business person attempts to defend themselves. It seems that it has been agreed that the "looser pays" method has numerous negative consequences and will not stop legal blackmail, intimidation, and harassment.

When you buy fire apparatus insist on SUPERIOR quality!

One of the problems is that Montana has a vast number of lawyers practicing law, I'm told a greater number per capita than any of our neighboring states. Consequently, there are lawyers who are hungry for cases, regardless of how small or fictitious the substance. It is practically impossible to reduce or control the current methods used by attorneys working with clients offering weak or hypothetical grievances. I recognize that it is very difficult to implement any laws or regulations which will place controls such as tort on the legal profession, in Montana. When I served on Governor Schwinden's Build Montana Committee, at the Governors suggestion, this committee spent a great deal of time pursuing the possibilities of tort control. In spite of loud and persistent and "dog and pony shows" before the committee by the trial lawyer community, the committee did offer a method of tort control to Legislature. The recommendation was simply that the Legislature should be allowed to consider legislation that would place tort control in a position of consideration before the General Legislature. The Montana Legislature did implement legislation in accord with our recommendation. However, within a very few months, the Supreme Court declared that legislation unconstitutional. Interestingly enough, one of the trial lawyers that appeared during our committees hearings objecting strenuously to any effort to implement tort control happened to be the wife of one of the Supreme Court Justices.

While any method of tort control may be impossible in Montana, it may be possible to control antics and maneuvers pursued by some of the legal profession members designed to bleed some small businesses of their life's blood. My suggestion is procedures whereby an attorney would not find it to his or her advantage to consider actions involving hypothetical, imagined and/or weak complaints before proceeding against small business. If a method of action were pursued whereby an attorney pursuing methods of "legal blackmail," threats, and intimidations could not collect any fee from his clients or defendants should the procedure he has taken prove unsuccessful. Furthermore, such lawyers could be constrained from collecting any fees, or very limited fees should it be that lawyers intent to simply blackmail the small business defendant into a position of paying tribute. Lawyers that take part in such antics should be responsible for their actions involving small business in costly loss of time and resources. With controls on the fees they can gain, no doubt they would consider such cases very carefully before proceeding to harass, intimidate, and blackmail small business.

Small business people are all too familiar with the costly harassment, intimidation, and prejudicial procedures by various appointed commissions, bureaus, and quasi judicial boards. As a person with over 50 years experience as a small business man, I have personally experienced a great number of experiences involving the afore mentioned. This all adds up to a poor business climate in Montana, forcing many small businesses out of Montana into neighboring states or preventing businesses from being established in Montana.

I have learned that Montana Human Rights Division, for example, is not decreed by the federal government and the costs of this commission are covered two-thirds by Montana taxpayers and one-third by the federal government. I have read with interest the great number of complaints the Montana Human Rights Commission must consider and also how few justify their actions. No doubt this proves to be costly procedure. Why must it be so? Why can't human rights complaints be screened and considered by the attorneys of Montana just as wrongful discharge complaints are considered. I would suspect that if unfounded and/or nuisance complaints were not considered "free," many actions by those that purport them, would not occur. Furthermore, if attorneys' fees were regulated in instances of legal blackmail, hypothetical, weak complaints were involved, no doubt the screening would be very thorough and completed at no expense to Montana taxpayers.

Question regarding Human Rights Division: Has determinations on wrongfully discharge become a function of Montana Human Rights Commission? Referencing a recent article in the Independent Record, it appears that this commission has enlarged their Quasi judicial jurisdiction. Isn't wrongful discharge a matter for which a complainant must contact an attorney? Does the Human Rights Commission now offer disgruntled employees free legal services?

Hopefully, small business people, legislators, and the Governor's Office will work together, in the afore mentioned areas to improve Montana's small business climate. Improving the business climate would be advantageous for Montana's entire economy. If we will cooperate and work together to eliminate at least the majority of harassment, intimidation, and legal blackmail of small business, our economy will surely improve and prosper. Remember, business' that fail and/or have yearly losses do not pay taxes. New businesses that consider Montana and then settle in other states contribute nothing to our state's economy.

Sincerely,

Jack Martinz

Commission passes penalties for harassment, retaliation

By the Associated Press

The Montana Human Rights Commission released orders Friday explaining financial penalties assessed against a Butte tavern owner for sexual harassment and a Helena car repair shop owner for retaliating against an employee.

In the car shop case, employee Warren Zimmerman complained to owner Jamie Neer that he was being sexually harassed by co-worker Ross Johnson.

Neer ultimately fired both Zimmerman and Johnson, and Zimmerman responded with the human rights complaint.

The commission rejected Zimmerman's complaint of sexual harassment: "In spite of the fact that Johnson's sexually offensive comments revealed overt homosexual tendencies, both parties agreed that Johnson was not making sexual advances upon Zimmerman or any other worker in the all-male shop."

However, the commission agreed with Zimmerman that his firing was an illegal retaliation for having made the complaint in the first place. They awarded him \$13,891.36 in lost wages and interest.

In the tavern case, the commission agreed with bartender Janette Martin of Billings that Russell Anderson, the former owner of the Sportsmen Bar in Butte, was "boorish and assaultive."

Martin also won a claim that Anderson discriminated against her based on a pay scale below a fellow male worker. She was awarded \$27,960 for back pay and emotional harm.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 21

DATE 2-18-97

BILL NO. SB 350

Re: "Helena Car Repair Shop"

Note that the Montana Human Rights Commission rejected the complaint of sexual harassment. However, the Human Rights Commission determined that the firing of the complainant was an illegal retaliation. Hence, they levied \$13,891.36 against the car repair shop.

Questions:

How broad is the jurisdiction of the Montana Human Rights Commission? Is this Commission authorized to provide free legal services to persons claiming "Wrongful Discharge"?

If this Commission is operating within the scope of their jurisdiction, then another government funded quasi judicial entity should be created to provide free legal services for small business in case of wrongful discharge complaints. At the very least, the defendant small business should be reimbursed by the government for legal services fees entailed in the defense of the complaint being made by way of free legal services provided by the Human Rights Commission.

MONTANA'S DISCRIMINATION LAWS

Montana's discrimination laws can be found in the MONTANA HUMAN RIGHTS ACT and in the MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES.

These laws make it unlawful to discriminate in:

- CREDIT
- EDUCATION
- EMPLOYMENT
- FINANCING
- HOUSING
- STATE AND LOCAL GOVERNMENTAL SERVICES and EMPLOYMENT
- INSURANCE (Sex and marital status only)
- PUBLIC ACCOMMODATIONS

because of:

- AGE
- FAMILIAL STATUS (Housing only)
- MARITAL STATUS
- NATIONAL ORIGIN
- PHYSICAL or MENTAL DISABILITY
- POLITICAL BELIEFS or IDEAS (Governmental services and employment only)
- RACE/COLOR
- RELIGION/CREED
- SEX (Including pregnancy, maternity and sexual harassment)

These laws also make it unlawful to retaliate against a person for opposing unlawful discriminatory practices or for participating in a human rights proceeding.

WHO CAN FILE A COMPLAINT WITH THE COMMISSION?

The Montana Human Rights Commission accepts complaints from any person who believes he or she has been unlawfully discriminated against, including employees, applicants for employment, homeseekers and others.

The Commission also accepts complaints filed on behalf of a person who has been unlawfully discriminated against, including complaints filed by organizations (for example, fair housing groups, civil rights groups), and class representatives, and accepts complaints from discrimination testers. The Commission is also authorized to initiate complaints on its own.

WHAT REMEDIES FOR DISCRIMINATION ARE AVAILABLE THROUGH THE COMMISSION?

If the Commission finds that unlawful discrimination has occurred, it is empowered to order the respondent to (1) cease the discriminatory conduct; (2) rectify any harm through the payment of back pay or other actual damages; and (3) in housing cases, pay a civil penalty. The Commission may seek enforcement of its orders in district court.

IF YOU HAVE OTHER QUESTIONS,

CALL (406) 444-2884

OR

1-800-542-0807

TDD: 406/444-0532

OR WRITE

MONTANA HUMAN RIGHTS COMMISSION

P.O. BOX 1728

HELENA, MONTANA 59624

The Human Rights Commission is committed to making its services available to persons with disabilities in compliance with Title II of the Americans with Disabilities Act and relevant state law. The Commission will not exclude persons with disabilities from participation at its meetings or otherwise deny them the Commission's services, programs, or activities. The Commission will also provide and accept information in alternative formats to accommodate disabilities. Persons with disabilities requiring accommodation in order to take advantage of the Commission's services should contact the Commission staff.

1,000 copies of this public document were published at an estimated cost of 25¢ per copy, for a total cost of \$250.00, which includes \$250.00 for printing and \$.00 for distribution.

(Rev. 5/94)

THE MONTANA HUMAN RIGHTS COMMISSION



A GUIDE FOR MONTANA CITIZENS

DATE 2-18-97
BILL NO SB 350

STATE OF MONTANA
HUMAN RIGHTS COMMISSION

1-800-542-0807
TDD: 406/444-0532

WHAT IS THE MONTANA HUMAN RIGHTS COMMISSION?

The Montana Human Rights Commission is the state agency which enforces Montana's discrimination laws. The Commission consists of five persons appointed by the Governor and confirmed by the Montana Senate. The Commission employs a staff to investigate complaints of discrimination and to implement the policy of the state against discrimination. The Commission's office is located in Helena.

WHAT DOES THE HUMAN RIGHTS COMMISSION DO?

The Commission Staff:

- Accepts discrimination complaints.
- Conducts impartial investigations of the complaints.
- Attempts resolution of each case.
- Attempts conciliation of complaints when substantial evidence exists that discrimination has occurred.
- Provides technical assistance concerning discrimination law.
- Litigates housing cases before the Commission or in district court when substantial evidence exists that discrimination has occurred.

The Commission:

- Conducts a formal or informal public hearing when conciliation is not possible.
- Issues a decision on the case.
- Orders any reasonable measure to correct discriminatory practices and correct harm to persons discriminated against.

WHO INVESTIGATES DISCRIMINATION COMPLAINTS?

The Commission staff investigates complaints to determine whether substantial evidence of discrimination exists. The investigation is neutral and the staff does not act as an advocate for the complainant. During the investigation, the staff may issue subpoenas, request the production of documents, and conduct testing.

DOES THE COMMISSION PROVIDE LEGAL REPRESENTATION TO EITHER PARTY?

Except in housing cases, the Commission staff does not usually represent either party at any time during the complaint proceedings. The staff does represent the complainant in housing cases if the staff has made an investigative finding of reasonable cause to believe discrimination occurred.

WHO IS RESPONSIBLE FOR ATTORNEY'S FEES IN DISCRIMINATION CASES?

Whether the parties elect the administrative hearing or the district court process, the prevailing party may bring an action in district court for attorney's fees.

DOES THE HUMAN RIGHTS COMMISSION INVESTIGATE VIOLATIONS OF FEDERAL CIVIL RIGHTS LAWS IN MONTANA?

The Human Rights Commission has agreements with the Department of Housing and Urban Development to investigate federal fair



housing cases and with the Equal Employment Opportunity Commission to investigate federal employment discrimination cases. In many cases, complaints are investigated as possible violations of both state and federal statutes.

TIME LIMITS FOR FILING DISCRIMINATION COMPLAINTS

Generally, complaints must be filed within 180 days of the date of the alleged discrimination under Montana law. The statute of limitations for filing fair housing complaints with the Commission is one year.

If a complainant has followed a written grievance procedure established by a collective bargaining agreement, contract, or written rule or policy to resolve the dispute, the complaint must be filed within 300 days of the alleged discrimination.

ISSUES THAT ARE NOT WITHIN THE AUTHORITY OF THE COMMISSION

The Commission does not handle:

- Hiring and firing decisions which do not relate to discrimination based upon the factors listed above, such as terminations without good cause under the Montana Wrongful Discharge Act.
- Access to and confidentiality of personnel files.
- Smoker's rights; Indoor Clean Air Act (except when a physically handicapped non-smoker alleges handicap discrimination based upon the smoking of others.)
- Matters related to arrest, criminal convictions, or sentencing.
- Matters related to divorce proceedings, child custody and child support.
- Matters related to decrees issued by courts.
- Veteran's preference.
- General unfair treatment not based upon one of the protected classes (race, sex, age, and so on).
- Unlawful discrimination alleged to have been committed by the federal government or by tribal governments.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

116 10 25

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 23
DATE 2-15-97
BILL NO. SB 350

Ms. Anne McIntyre
Administrator
Montana Human Rights Commission
615 Helena Avenue
Helena, Montana 59624

Dear Ms. McIntyre:

This is in preliminary response to your inquiry, which we received on Friday, February 14, 1997, regarding the provisions of S.B. 350 with respect to the substantial equivalency status of the Montana Human Rights Act. We have been advised that a Senate committee will consider the bill today.

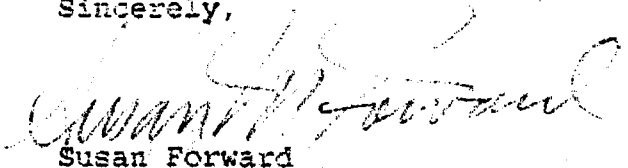
The Fair Housing Act provides that, where a state or local government has been certified by the Department, the Department shall refer complaints alleging discriminatory housing practices to an agency enforcing such a law. 42 U.S.C. 3610 (f). An agency may be certified only when the Secretary determines that the rights, procedures, remedies, and the availability of judicial review under the State or local law enforced by the agency are "substantially equivalent" to the rights, procedures, remedies and the availability of judicial review under the Fair Housing Act. See 42 U.S.C. § 3610(f)(3)(A). The Department, in making such determinations, considers the provisions of the law on its face and the current practices of the agency enforcing the law. See 24 C.F.R. Part 115. The Montana Human Rights Act has been found by the Department to be substantially equivalent to the Fair Housing Act, and the Montana Human Rights Commission has been certified pursuant to 42 U.S.C. § 3610(f)(1).

A review of the bill indicates that it contains a number of provisions which, if passed, could affect the Montana law's equivalency status. For example, the proposed change in provision 49-2-510 (1) would limit the time period for filing a complaint alleging an unlawful discriminatory practice to 90 days. In order to be equivalent, a State or local law is prohibited from having a provision that a complaint must be filed within any period of time less than 180 days after an alleged discriminatory practice has occurred or terminated. Similarly, a proposed change to Section 49-2-503 appears to delete the provision allowing the commission to seek temporary injunctive relief. However, an equivalent agency must be authorized to grant injunctive or other equitable relief, or be specifically authorized to seek such relief in a court of competent jurisdiction.

If the Montana law does not provide rights, procedures, remedies or judicial review equivalent to those provided under the Fair Housing Act, the agency's status as substantially equivalent may be jeopardized. Funding under the Fair Housing Assistance Program is not available to agencies enforcing laws which are not equivalent, and, rather than referring complaints to the Montana Human Rights Commission, the Department would investigate the complaints arising in Montana which are currently being investigated by the Montana Commission.

Please keep us advised of any changes or activities with respect to the pending changes in the Montana Human Rights Act. You may contact Sara K. Pratt, Director of the Office of Investigations, at (202) 708-0836 for further information on the status of our review.

Sincerely,



Susan Forward
Deputy Assistant Secretary
for Enforcement and
Investigations

Amendments to Senate Bill No. 350
First Reading Copy

For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure
February 17, 1997

1. Title, lines 4 through 23.

Following: "REVISING THE"

Strike: remainder of line 4 through "CASES" on line 21

Insert: "PROCEDURES OF THE COMMISSION FOR HUMAN RIGHTS;
ESTABLISHING PROCEDURES AND REMEDIES FOR COMMISSION
COMPLAINTS AND COMPLAINTS OF PATTERNS OR PRACTICES OF
DISCRIMINATION"

Following: "SECTIONS" on line 21

Strike: remainder of line 21 through "49-2-305," on line 22

Strike: "49-2-503,"

Following: "49-2-505,"

Strike: "49-2-506,"

Following: "49-2-509,"

Insert: "AND"

Following: line 22

Strike: "AND 49-2-601,"

Following: "MCA;"

Insert: "REPEALING SECTIONS 49-3-304, 49-3-305, 49-3-306, 49-3-
307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312,
MCA;"

Following: "AN"

Strike: "IMMEDIATE"

Strike: "A RETROACTIVE"

Insert: "AN"

2. Page 1, line 28 through page 15, line 7.

Strike: everything after the enacting clause

Insert: "NEW SECTION. Section 1. Commission complaints. (1)The commission may initiate a complaint under this chapter
by filing an action in district court within 1 year after
the alleged unlawful discrimination occurred or was
discovered.(2) (a) If the court finds that the defendant has engaged
in the discriminatory practice alleged in the complaint, the
court shall order the defendant to refrain from engaging in the
discriminatory conduct and may prescribe conditions on the
defendant's future conduct relevant to the type of discriminatory
practice found. The court shall also prescribe measures to
remedy the harm, pecuniary or otherwise, to any person aggrieved
by the discriminatory conduct.(b) If the defendant has been found to have committed a
previous violation of this chapter, the court may assess a civil
penalty:(i) in an amount not exceeding \$10,000 if the person has
been found to have committed one prior discriminatory practice in

violation of this chapter during the 5-year period ending on the date of the filing of the complaint; or

(ii) in an amount not exceeding \$25,000 if the person has been found to have committed two or more other discriminatory practices in violation of this chapter during the 5-year period ending on the date of the filing of the complaint.

(3)(a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of this chapter or that a group of persons has been discriminated against in violation of this chapter and the violation raises an issue of general public importance, the commission may refer the matter to the attorney general to commence a civil action in an appropriate district court.

(b) The attorney general may file a civil action under this subsection (3) within 18 months after the alleged unlawful discriminatory practice occurred or was discovered.

(c) In a civil action under this subsection (3), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the person:

(i) in an amount not exceeding \$50,000 for a first violation; and

(ii) in an amount not exceeding \$100,000 for any subsequent violation.

(4) Upon timely application, a person may intervene in a civil action under this section with respect to which the intervenor is an aggrieved person.

(5) The court may award attorney fees to the prevailing party in an action under this section.

(6) Civil penalties under this section must be paid to the state treasurer and must be deposited in the general fund.

NEW SECTION. Section 2. **Exclusive remedy.** Except for claims arising under chapter 4, the provisions of this chapter establish the exclusive remedy for claims arising under state law for acts constituting an alleged violation of Title 49, chapter 3, or this chapter, including acts that may also constitute a violation of Article II, section 4, of the Montana constitution, or 49-1-102. A claim or request for relief under state law based upon the acts may not be entertained by a district court other than by the procedures provided for in this chapter.

NEW SECTION. Section 3. **Enforcement and remedies.** The procedures set forth in Title 49, chapter 2, part 5, apply to complaints alleging a violation of this chapter.

Section 4. Section 49-2-501, MCA, is amended to read:

"49-2-501. Filing complaints. (1) A complaint may be filed with the commission by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and

the particulars of the alleged discriminatory practice. ~~The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.~~

(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein in this section may not be considered by the commission.

(3) When a discriminatory practice comes to the commission's attention, the commission may commence a civil action in an appropriate district court in accordance with the procedures provided in [section 1]."

Section 5. Section 49-2-504, MCA, is amended to read:

"49-2-504. Informal settlement investigation and conciliation. The commission staff shall notify the parties of a complaint within 10 working days of receipt. The notice must include a copy of the complaint. The commission staff shall informally investigate the matters set out in a filed the complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to attempt to achieve a resolution of the complaint by conference, conciliation, and persuasion that, in addition to providing redress for the complainant, includes conditions that eliminate the discriminatory practice by conference, conciliation, and persuasion identified in the investigation."

Section 6. Section 49-2-505, MCA, is amended to read:

"49-2-505. Contested case hearing. (1) If Except in cases alleging a violation of 49-2-305, if the informal staff efforts to eliminate the alleged discrimination resolve the complaint are unsuccessful, the staff shall inform the commission parties of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission hold a hearing on the complaint. The commission staff shall serve notice of the hearing, together with a copy of the complaint, on the parties.

(2) The hearing must be held by the commission in the county where the unlawful conduct is alleged to have occurred

~~unless the person, institution, entity, or agency charged in the complaint or the commission a party requests and is granted a change of venue for based upon a showing of good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act except as provided in 49-2-508.~~

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for ~~attorneys'~~ attorney fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~ attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure."

Section 7. Section 49-2-508, MCA, is amended to read:

"49-2-508. Enforcement of commission order or conciliation agreement. If the ~~commission's~~ a commission order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order. The commission or a party may also commence a civil action in an appropriate district court for relief for breach of a conciliation agreement."

Section 8. Section 49-2-509, MCA, is amended to read:

"49-2-509. Filing Dismissal of complaint by commission staff -- filing of a complaint in district court. (1) Except as provided in subsection (2) or with respect to complaints alleging a violation of 49-2-305, the commission staff shall, at the request of either party, ~~issue a letter entitling the complainant to file a discrimination action in district court~~ dismiss the complaint if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to ~~permit removal of a case to district court~~ dismiss a complaint pursuant to subsection (1) if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within ~~90 days~~ 6 months of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed ~~under 49-2-501 and allow the complainant to file a discrimination~~

~~action in district court if:~~

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; ~~or~~

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence; or

(d) the commission staff determines that the commission will not hold a hearing within 12 months after the filing of the complaint and that the interests of fundamental fairness or the public interest support the dismissal of the complaint.

(4) A decision of the commission staff to dismiss a complaint or to refuse to ~~permit removal to the district court~~ dismiss a complaint is final unless a party seeks review by filing objections within 14 days after the decision is served on ~~him~~ the party. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (1) or (3) or of an order under subsection (4) of affirmance of a dismissal, whichever occurs later, ~~or of a letter issued under subsection (1),~~ the complainant may petition commence a civil action in the district court in the district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the ~~claimant~~ complainant fails to petition commence a civil action in the district court within 90 days after receipt of the ~~letter,~~ notice, or order issued by the commission or staff, the claim ~~shall~~ must be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

~~(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."~~

Section 9. Section 49-2-510, MCA, is amended to read:

"49-2-510. Procedures and remedies for enforcement of housing discrimination laws. (1) A complaint may be filed with the commission by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within 1 year after the alleged unlawful discriminatory practice occurred or was discovered. Except as otherwise specified, the procedures set forth in this part apply to complaints alleging a violation of 49-2-305.

(2) ~~(a) Except as provided in subsection (2)(b), if the commission, in a hearing under 49-2-505, finds that a person, institution, entity, or agency against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:~~

~~(i) in an amount not exceeding \$10,000 if the respondent has not been found to have committed any prior discriminatory housing practice in violation of 49-2-305;~~

~~(ii) in an amount not exceeding \$25,000 if the respondent has been found to have committed one other discriminatory housing practice in violation of 49-2-305 during the 5 year period ending on the date of the filing of the complaint; and~~

~~(iii) in an amount not exceeding \$50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7 year period ending on the date of the filing of the complaint.~~

~~(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.~~

~~(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is in substance affirmed:~~

~~(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency; and~~

~~(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.~~

~~(4) (a) When a complaint is filed under 49-2-305, a complainant, respondent, or aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the complaint relates. Within 30 days after the election is made, If the commission staff has investigated a complaint alleging a violation of 49-2-305 and found substantial evidence to believe a violation has occurred, it shall attempt to resolve the complaint in accordance with 49-2-504. If efforts to resolve the complaint fail, the commission shall commence a civil action in an appropriate district court on behalf of the complainant or aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial~~

evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the commission staff shall dismiss the complaint and the complainant may commence a civil action in an appropriate district court in accordance with subsection (5)(3). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene in the action.

~~(b) The commission may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).~~

~~(5)(3)~~ (a) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 or subsection (1) of this section and without regard to the status of a complaint filed with the commission ~~except as provided in subsection (5)(d).~~ If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission may not continue administrative proceedings on a complaint after the beginning of a trial of a civil action commenced by the aggrieved party under this subsection ~~(5)(3)~~ seeking relief with respect to the same alleged violation of 49-2-305.

~~(d) An aggrieved person may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission has commenced a hearing on the record under 49-2-505 regarding the same complaint.~~

~~(e)~~ Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection ~~(5)(3)~~ or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant; or
(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

~~(f)(e)~~ Upon timely application, the commission may intervene in a civil action brought under this subsection ~~(5)(3)~~ if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under ~~subsection (7)~~ [section 11].

(4) The district court shall provide for an expedited trial and other proceedings in a complaint under this section.

~~(6)~~ (5) (a) If the court finds that a person, institution, entity, or agency against whom a complaint was filed under this section has engaged in a discriminatory practice in violation of 49-2-305, the court may, in addition to the other remedies and injunctive and other equitable relief provided under 49-2-506, award punitive damages. The court may also award attorney fees to the prevailing party.

(b) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the court shall, no later than 30 days after the date of the issuance of the judgment:

(i) send copies of the court's findings and order to the licensing or regulatory agency; and

(ii) recommend to the licensing or regulatory agency appropriate disciplinary action, including, when appropriate, the suspension or revocation of the license of the person.

~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.~~

~~(b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

~~(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:~~

~~(i) in an amount not exceeding \$50,000 for a first violation; and~~

~~(ii) in an amount not exceeding \$100,000 for any subsequent violation.~~

~~(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.~~

~~(8) Civil penalties under this section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement."~~

NEW SECTION. Section 10. {standard} Repealer. Sections 49-3-304, 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, and 49-3-312, MCA, are repealed.

NEW SECTION. Section 11. {standard} Codification instruction. (1) [Sections 1 and 2] are intended to be codified

as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, part 5, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 49, chapter 3, part 3, and the provisions of Title 49, chapter 3, part 3, apply to [section 3].

NEW SECTION. Section 12. {standard} Effective date -- applicability. [This act] is effective July 1, 1997, and applies to claims pending or filed with the commission on or after [the effective date of this act]."

TESTIMONY IN OPPOSITION TO SENATE BILL 350 DATE 2-18-97

Catherine M. Swift

BILL NO. SB 350

I am an attorney in private practice in Helena. My practice is limited to the representation of public school districts. In that capacity, I regularly represent school districts before the Montana Human Rights Commission.

There is no question but that the Commission's investigatory process represents an informal & inexpensive means of resolving discrimination complaints. I encourage our clients to participate fully in the process at this level, which has paid off in that we rarely have cases go beyond the investigation process. In virtually every case where I have thought we were entitled to a finding of no discrimination, we have won it at the investigation level. Most of our cases do not go forward from there. If there is a basis for a cause finding, the investigation provides a process for resolving those at the lowest, most inexpensive level. In short, the process has generally worked very well for our clients.

I am opposed to parts of SB 350 because I think they may harm employers more than they help them by encumbering the process unnecessarily and, to some extent, exposing the employer to additional proceedings at the federal level. For these reasons, I urge your modification or deletion of these aspects of the bill:

Section 3, which removes the right of the Commission to delegate investigatory powers to staff, is counterproductive and will simply bog down the process; it would be far better to simply have a means to challenge the investigator rather than subjecting all investigators and all employers to this cumbersome process.

Section 12, allowing for the immediate removal of a complaint to district court, could hurt employers more than it could help:

(1) It removes any possibility of an informal settlement facilitated by an "unpaid" professional;

(2) If it is designed to provide a better option for employers, it is counterproductive because any employer who chooses to remove to district court still faces an EEOC investigation, which I wouldn't wish on anybody; that fact alone would appear to deter most employers from removal. The option is most likely to be used by complainants in cases in which the employer doesn't want the case removed.

(3) A de novo hearing in district court should be available only where the case goes to court without a prior hearing; the employer is protected by the right to remove the case to district court prior to the HRC hearing under this legislation.

MONTANA RURAL EDUCATION ASSOCIATION

Mailing Address: P.O. Box 5418

1134 1/2 Butte Avenue

Helena, MT 59604

Phone: 406-443-2629 FAX: 406-443-5297

SENATE LABOR & EMPLOYMENT

COMMITTEE NO. 26

DATE 2-18-97

BILL NO. SB 350

TO: Senate Labor and Employment Relations Committee
FROM: Don Waldron
DATE: February 18, 1997
SUBJECT: SB 350 by Senator Walter McNutt

In the event the schools are involved in any type of discrimination action, we want to have it settled as soon as possible. If the staff is cut from the Commission for Human Rights, we may find greater delays than we are having now.

As long as we are subject to these types of actions, we hope that a well-trained, efficient staff would be continued. Considering these concerns, MREA would need to be opposed to SB 350.

Thank you.

Sincerely,

Don Waldron

TESTIMONY IN OPPOSITION TO SB 350
By Christine Kaufmann
MONTANA HUMAN RIGHTS NETWORK

MHRN is a private non-profit, advocacy organization which helps communities respond to bigotry, intolerance and discrimination. We work with 12 local groups and over 1300 members all across Montana.

Despite the similarity of our names, we have no formal or structural relationship to the Human Rights Commission. Because of the kind of work we do, however, we come in contact with many people who feel they have been discriminated against.

We do not have the resources to investigate these complaints and certainly no authority to enforce civil rights laws. We refer these individuals to the Human Rights Commission, because it is a much cheaper and more efficient system for complaint resolution than the court system.

What we do is to try to keep the public informed about discrimination that is occurring in their communities and suggest public and visible responses. We also try to keep the public informed about what policy-makers are doing, or not doing with regard to civil rights enforcement.

SB 350 is completely irresponsible. By tampering with the authority of the commission, by undermining its federal equivalency, it renders civil rights enforcement almost meaningless in Montana. The proponents behind this bill should be more honest and simply do away with the Commission entirely. That is the effect of the bill, and I believe it is also the intent. What is left after this bill is a total sham. It gives the appearance that we have civil rights enforcement, when we do not. Why on earth would you have a HRC and tell them not to assist tenants or landlords, employees or employers with matters of discrimination in Montana. (Page 2, lines 1 and 2)

The HRC is responsible for enforcing civil rights laws. That's their job. Sometimes powerful interests have to change the way they do business in order to comply with the law. I don't know the details of the housing case in Kalispell. On the surface, it appears that there could be some attention paid to evaluating the process and making some changes. If so, let's do that. Let's not do away with enforcement of the law as this bill does.

The bill before you is simply retaliation against the HRC for enforcing the law, for doing their job. The powerful interests that were offended shopped around for others who didn't like the HRC. Guess who's unhappy with the HRC? --people who were caught breaking the law.

Imagine a similar scenario in criminal law. Imagine some shoplifters coming before you, some who had plea bargained for lesser charges, some who were found guilty and paid a small fine. They were complaining that they didn't like the process, they thought they were treated unfairly, they didn't hurt anybody, they didn't take very much, and the cops were a bit heavy handed. Their solution was to get rid of law enforcement. Or what about a group of DUI offenders who complained about the process and the penalties for drunk driving. They hadn't hurt anybody, no one had initiated a complaint. Why should the law be enforced? Their solution--take away

authority of law enforcement to make an arrest unless someone says they are harmed. You'd smile and perhaps set up a process to study the issues of how the police treat shoplifters.

If you pass this bill you are sending the message that civil rights laws are not important in Montana. If you pass this bill you are inviting federal law enforcement into the center of Montana small businesses. If you pass this bill you are telling citizens the state doesn't much care about their civil rights--they can just spend their money in court.

We urge a DNP on SB 350.

Attorneys at Law
Reynolds, Motl and Sherwood
A Professional Limited Liability Partnership

FILED IN COURT NO. 28
DATE 2-18-97
BILL NO. SB 350

Linda M. Deola
Jonathan R. Motl
James P. Reynolds
Frederick F. Sherwood
Deborah S. Smith
David K.W. Wilson, Jr.

401 North Last Chance Gulch
Helena, Montana 59601
(406) 442-3261
Fax (406) 443-7294

February 18, 1997

TO WHOM IT MAY CONCERN:

I understand that Jamie Neer has been appearing before the Legislature and complaining about a case involving my client, Warren Zimmermann, which was heard before the Montana Human Rights Commission. Warren is a working man and can't take much time off to attend committee meetings. If Mr. Neer again distorts what has happened though, Warren wanted this letter to tell his side of the story.

In September of 1992 Warren was fired by Jamie Neer. Mr. Neer gave his reasons in the attached letter he dated September 14, 1992. As you can see, one of the reasons given was that Mr. Neer "mistrusted" Warren because of a conversation in August of 1992 in which Warren had complained of sexual harassment. The other reasons given in the letter alleging bad work performance were found by the Commission to be pretextual and false, and it determined that this employer had unlawfully retaliated against the employee by firing him for making his complaint.

The matter is now on appeal to District Court, which is the proper forum for dealing with individual cases. Legislators certainly do not have the time to be able to learn all of the details of a particular employment dispute.

The law give remedies to the victims of discrimination, and the Commission is charged with enforcing that law. I hope that the Legislature does not let "sour grapes" from a losing party influence public policy.

Sincerely,

Frederick F. Sherwood

Frederick F. Sherwood

c: Warren Zimmermann

WESTSIDE WELDING & AUTO BODY

EMPLOYEE: ^(ZEE) WARREN CINNERMAN
POSITION: BODY MAN
DATE: 9-14-92
SUPERVISOR: JAMIE NEER

STATED ISSUE:

- | | | |
|---|---|---|
| ☒ Excessive Absenteeism | ☐ Poor Attitude | ☐ Failure to Call In |
| ☐ Excessive Tardiness | ☐ Insubordination | ☒ Other: WASTING TIME, MISTRUST |
| ☐ Misconduct | ☒ Unsatisfactory Work | |

TYPE OF ACTION:

- | | | |
|---|--|---|
| ☐ Oral Warning | ☐ Job Probation | ☐ Suspension |
| ☒ Written Warning | Dates: From: _____ | ☒ Termination |
| ☐ 2nd Written Warning | To: _____ | |

DATE OF PREVIOUS ACTION: AUG 14, 1992

EXPECTED IMPROVEMENT AND/OR STANDARDS FOR THE FUTURE:

Date of Next Review: NONE

Next action if employee does not meet the improvement or standard required:

TERMINATION OF EMPLOYMENT

SUPERVISOR'S REMARKS: (Explain details of issue) ZEE WASTES FAR TOO MUCH TIME. MAKES EXCESSIVE TRIPS FROM ONE END OF SHOP TO THE OTHER. WASTES TIME BEING WITH THE OTHER EMPLOYEES. QUALITY OF WORK IS STILL CRACKING - DOESN'T TAKE PROPER PRECAUTIONS, TO PROTECT VEHICLES FROM DAMAGING WHILE WORKING ON THEM. IN AUG. 1992 WHEN ZEE MADE KNOWN TO ME THE PROBLEM OF SEXUAL HARASSMENT HE WAS RECEIVING FROM ANOTHER EMPLOYEE, HE MADE THE COMMENTS THAT HE →

EMPLOYEE'S REMARKS: (Optional - if none, employee should enter "NONE")

USE BACK SIDE IF ADDITIONAL SPACE NEEDED FOR ANY ENTRY

I acknowledge that the above information has been discussed with me, and that I have received or was offered a copy of this document. My signature does not imply agreement or disagreement with the information set forth herein.

Warren Cinnerman Sent 18. 92

[Signature]

9/14/92

COULD SUE ME AND HAVE MY SHOP. ~~DE~~ THIS CAUSES
ME TO MISTRUST HIM.

LUXAN & MURFITT

PROFESSIONAL LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

MONTANA CLUB BUILDING • 24 W. SIXTH AVE.

P. O. BOX 1144 • HELENA, MONTANA 59624

(406) 442-7450

TELECOPIER (406) 442-7361

207 BROADWAY • P.O. BOX 1289

TOWNSEND, MONTANA 59644

(406) 266-4032

TELECOPIER (406) 266-4034

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 29
DATE 2-15-97
BILL NO. SB 350

GARY L. DAVIS
DALE E. REAGOR
PATRICK E. MELBY
MICHAEL J. RIELEY
TOM K. HOPGOOD
GREGORY A. VAN HORSSSEN
PATRICK F. HOOKS
KRISTI BLAZER
CANDACE C. TORGERSON

WALTER S. MURFITT OF COUNSEL
MICHAEL J. MULRONEY OF COUNSEL
H. J. LUXAN (1918-1984)

February 19, 1997

HAND DELIVERED

Honorable Thomas F. Keating
Chairman
Senate Labor and Employment
Relations Committee
Capitol Station
Helena, MT 59620

Re: Letter of Support for SB 350

Dear Senator Keating:

I am writing to you in my capacity as a registered lobbyist for Lee Enterprises, Inc. to advocate a "do pass" endorsement of SB 350 which was heard by your committee on Tuesday, February 18, 1997.

Lee Enterprises publishes daily newspapers in Billings, Butte, Helena, and Missoula, all of which regularly contain classified housing advertisements. Lee Enterprises also publishes weekly shoppers in numerous locations in Montana, all of which regularly contain classified housing advertisements.

As mentioned at the hearing on this bill, Lee Enterprises particularly supports Section 5 which specifically addresses classified housing advertisements. (Page 5, lines 6 through 11). Simply stated, the bill would require the Human Rights Commission to demonstrate that entities which regularly publish classified housing ads must do so as part of a pattern or practice which demonstrates a conscious and intentional disregard for the provisions of the Human Rights code.

To illustrate the rationale for this section of the bill, we need look no further than the ongoing investigation of two of Lee Enterprises' publications, the Missoulian and The Adit. By way of letter dated October 30, 1996, Lee Enterprises was advised that HRC staff had discovered the repeated publication of

Honorable Thomas F. Keating
February 19, 1997
Page 2

classified housing ads which violate the Montana Human Rights Act and the Federal Fair Housing Act. HRC staff noted publication of such ads "on at least ten occasions." When pressed further, HRC staff produced copies of five publications and hinted at "additional discriminatory ads." When pressed still further, HRC staff produced the text of 27 ads published between November 13, 1994 and November 17, 1996. Four of the ads were from *The Adit* and 23 were from the *Missoulian*. Of the ads produced, 12 were duplications of the same ad and 19 were barred under the one-year statute of limitation. What we end up with, not counting duplication and not counting time-barred claims, are two ads published in the *Missoulian* and three ads published in *The Adit*. Although questionable, we believe that all of the ads are defensible. For example, one of the classified ads published in *The Adit* was for a two bedroom mobile home "20 feet from river." The ad specified "adults" obviously for safety reasons.

For your information, Lee Enterprises publishes approximately 125,000 classified housing ads in the *Missoulian* every year. Although we have yet to see proof of the fact, for purposes of discussion, we can assume that the *Missoulian* publishes 24 discriminatory ads per year. This is an error rate of .002%. Given the volume of ads, we believe this is an outstanding record.

For your information, Lee Enterprises has adopted a zero tolerance policy for the publication of discriminatory classified housing ads. Unfortunately, no matter how well intentioned, how well trained, or how experienced the customer service representatives are, mistakes are bound to happen when this volume of advertising is being processed. Lee Enterprises finds itself in a strict liability situation with regard to the publication of classified housing ads. This is an intolerable situation and one which prompts Lee Enterprises' support of Section 5 of SB 350. By requiring proof of a pattern or practice of publishing discriminatory ads which demonstrates a conscious and intentional disregard for the provisions of the Human Rights Code, a degree of protection will be afforded for innocent mistakes.

We would note that at the same time part of the HRC staff was investigating the *Missoulian*, another part of the HRC staff was stating that the *Missoulian* has always cooperated, that the HRC appreciates the many times the *Missoulian* has called and that the HRC knows that the *Missoulian* does its best to do business within the law. We would also note that the *Missoulian* has conducted at least 21 separate housing discrimination training sessions for staff and advertisers between 1991 and the present

Honorable Thomas F. Keating
February 19, 1997
Page 3

and that the *Missoulian* staff has made numerous inquiries of HRC staff on questionable advertisements.

Finally, we would note that we are unaware of even a single aggrieved consumer and believe that this entire investigation has been generated by the Human Rights Commission staff.

Lee Enterprises stands firmly in support of SB 350, particularly Section 5 thereof and solicits a do pass endorsement from your committee.

Sincerely,

TOM K. HOPGOOD

A handwritten signature in black ink, appearing to read 'Tom K. Hopgood', written over the typed name.

for LUXAN & MURFITT

TKH/vjz

cc: All Committee Members

2-18-97

DATE 2-18-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 353, SB 325, SB 349,
SB 290, SB 350

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<u>Ronald W. Small</u>	<u>Golden Sunlight Mine</u>	<u>325</u>	<u>Yes</u>	
<u>Joe Scheeler</u>	<u>Abn Grove Cement</u>	<u>325</u>	<u>YES</u>	
<u>Jill Andrews</u>	<u>Montana Mining Assn</u>	<u>325</u>	<u>Yes</u>	
<u>John Pettit</u>	<u>Cuzenae America</u>	<u>325</u>	<u>yes</u>	
<u>Elton Charnay</u>	<u>Continental Lime Inc.</u>	<u>325</u>	<u>YES</u>	
<u>Rick Dale</u>	<u>Golden Sunlight Mines</u>	<u>325</u>	<u>Yes</u>	
<u>MARK BARRY</u>	<u>State Fund</u>	<u>290</u> <u>349</u>	<u>X</u>	
<u>Reguline Benmark</u>	<u>Am. Ins. Assn</u>	<u>325</u> <u>(349, 290)</u>	<u>X</u>	<u>350</u>
<u>Jim Shantz</u>	<u>MT. Asn People</u>	<u>350</u>	<u>X</u>	
<u>Allen Chronister</u>	<u>MT. Schools Group</u>	<u>290</u> <u>349</u>	<u>X</u>	
<u>Howard Barry</u>	<u>MT Schools Group</u>	<u>290</u> <u>349</u>	<u>X</u>	
<u>Rich Shaffer</u>	<u>SUP/SAM</u>	<u>290</u>	<u>X</u>	
<u>Alan Petersson</u>	<u>SAM</u>	<u>290</u>	<u>X</u>	
<u>Charles Phillips</u>	<u>Self</u>	<u>350</u>	<u>X</u>	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/18/97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Ronda Carpenter	Mt Housing Providers	SB 350	K	
SHARON HOFF	MT CATHOLIC CONFERENCE	SB 350		X
Jane Lopp	MT Human Rights Commission	SB 350		X
DON WALKER	MT Rural Ed ASSN.	SB 350 SB 290	X	
Don Judge	MT STATE AFL-CIO	SB 349		
Jim Hill	St. of Montana DOLL	SB 349	X	
Cathy Swift	SELF	SB 350		X
Jim Brown	Bdy. Code Bm., Commers	SB 290	X	
DEBBY LEADBETTER	SELF	SB 350	X	
DIANE RICE	SELF	SB 350	X	
Moe Wozepko	Kalispell Chamber	SB 350	X	
Rodney Luee	HRC	SB 350		
DICK PATTERSON	MSCA	SB 350		X
Don Allen	Allen & Associates	SB 350	K	

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DATE 2-18-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Alane Harkin	self	350		X
Penny Darkenwald	1	350	X	
Don Chance	Mt. Building Ind. Assn.	350	X	
Bob Gilbert	Mt. Pet. Marketers A.	350	X	
Lisa Putzgi	MAR	350	X	
Mick Robinson	Geri V. Linn	353		X
Russ Ritter	MRL	325	X	
George Wood		325-349 353-280	✓	
David Duszal	mt chamber	353		✓
L. Ken	Helm	350	✓	
Jack Maritz	Helen S.F.A.	350		
GREG Panter	Dr. Zoon's Auto Park	350	X	
Rob Armstrong	RoCo Auto	350	X	
Oary J. Holby	Courtesy Body Shop	350	X	

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DATE 2-18-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Bib Woodhington	PHILA	349	✓	
P.C. Musgrove	NMAR	350	✓	
Kathy Schulte	NMAR	350	✓	
Karen Haas	NMAR	350	✓	
Karen Ryke	NMAR	350	✓	
Pat Blunt	HRC	350		✓
Jack Halstrom	MALC	349	✓	
Pat Haffey	Dept of Labor	all		
Dean Kondash	NAAPA Auto Parts	350	X	
Charles R. Brooks	State Street	SB353		X
Charles R. Brooks	Billings Chamber	SB350	X	
Aime MacDugue	Human Rights			X
Jim Meldrum	Self	350		X
Bill Snoddy	MCDONALD GOLD PROJECT	325	X	

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DATE 2-18-97

SENATE COMMITTEE ON Sahar

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
LANCE MELTON	MSBA	290	X	
PETER SULLIVAN	Myself	350	X	
Jan Schunk	"		X	
Christine Kaufman	MT Human Rights Note	350		X
Tom Hopwood	Lee Enterprises Inc.	350	✓	
Jan Manderville	Montana Telephone Assoc.	290	✓	
Mike Strand	Montana Independent Telecommunications Systems	290	✓	
Nobert Rapp	Self	350		✓
Sue Fifield	MT Fair Housing	350		✓
CEDRIC BLACK EAGLE	MT. Fair Housing	350		✓
Jerry Orsini	MT State Building Trades	349	X	
Darryl Wiers	MT Electric Co-ops Assn	290	X	
John Fitzpatrick	Pegasus Gold	325	X	

VISITOR REGISTER

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DATE 2/18/97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Kate Cholewa ^{CHOLEWA}	MT Nomenclbly	350		✓
Greg Van Housen	Montana Housing Pwntes	SB 350	✓	
CANDACE Torgerson	MT. Retail Assn	SB 350	✓	
Steve Turtiewicz	MT Auto Dealers Assn	SB 350	✓	
Riley Johnson	NFIB	SB 350	✓	
Clara Paladichuk	Richland Dev	"	✓	
X Kathleen Schulte	NMA R 752-	4313		
Margaret Morgan	MT Assn of Realtors	SB 350	✓	

VISITOR REGISTER

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DATE 2/18/97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Al Smith	MAP	350		X
Mary Westwood	SELF	350		X
Janice Jaggett	Self	350		X
MIKE Meloy	Self	370		X
Jim Meldrum	Self	350		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on February 20, 1997, at
3:24 P.M., in Room 415.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 375, SB 364; 2/17/97
Executive Action:	SB 353 TABLE
	SB 325 DO PASS
	SB 290 DO PASS AS AMENDED
	SB 349 DO PASS AS AMENDED
	SB 350 DO PASS
	SB 375 DO PASS AS AMENDED
	SB 364 TABLE

HEARING ON SB 375

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Jacqueline Lenmark, American Insurance Association
Mark Barry, State Fund
George Wood, Montana Self-Insurers' Association
Oliver Goe, Montana Municipal Insurance Authority
and Montana Schools Group Risk Retention Program
Ray Barnicoat, Montana Association of Counties

Jacqueline Lenmark said she spoke too broadly.

Motion/Vote: SEN. STEVE BENEDICT MOVED DO PASS TO RESTORE SUBSECTION (B) TO ITS ORIGINAL LANGUAGE. Motion CARRIED 6-3.

Vote: Motion DO PASS ON SB 349 AS AMENDED CARRIED UNANIMOUSLY.

{Tape: 2; Side: B; Approx. Time Count: 6:08 p.m.; Comments: N/A.}

EXECUTIVE ACTION ON SB 350

Amendments: See (EXHIBIT 15).

Discussion: CHAIRMAN KEATING said he had been approached from several angles. The bill has the right idea for re-arranging things. It may seem somewhat strict as to the Commission and it may not seem strict enough to some of the proponents, but he didn't know that this Committee had the time to rearrange this bill to suit everybody; however, there are a couple of things that might be done to make the bill less heavy-handed with regards to restrictions on actions of the Commission, but at the same time carry through the theme of helping the people who are involved in those Civil Rights complaints.

The one area which was recommended for amendment dealt with the rules of civil procedure as being too stringent, too complicated, too heavy for the work of the Commission in regards to mediating, investigating or working toward the settlement of the claims. It's been suggested we operate the contested case hearing under the Montana Human Rights Act as opposed to the Rules of Civil Procedure. If the committee were to agree, we could amend Section 9 of the bill to remove the Rules of Civil Procedure.

SEN. SUE BARTLETT said she heard such a variety of things from interested parties and was wondering about taking a moment to ask the three or four major interested parties to tell what they would like to see happen with this bill at this point.

CHAIRMAN KEATING said he would like to preface that request with his remarks from the principals involved. They have agreed the whole bill is very complicated and they do want to make changes. They are all interested in working towards a better bill for all sides. Also, if they want us to keep the bill alive, we can pass it in some form and then they can work on their amendments. When the hearing is in the House, they can mesh their ideas and "duke" it out over there.

David Owen, Montana Chamber of Commerce said they had a productive and good-faith meeting yesterday afternoon with the principals involved in this bill. They decided they needed more time to work on the language, get through the technical part and sort out the questions. Given the time constraints of the transmittal, it seems it would be best to make some immediate

changes, to pass it on over to the House and make a commitment to continue the process we had agreed to yesterday.

{Tape: 3; Side: A; Approx. Time Count: 6:16 p.m.; Comments: N/A.}

Ann McIntyre said she felt this is a complex bill from a procedural and remedial standpoint and it is very difficult to craft amendments to address the concerns of the proponents of the legislation and still come out with something which will work for the citizens. That has to be the real goal. She attempted to develop some amendments which were distributed at the hearing and found the bill essentially was so technically flawed, in my view, it was hard to put the amendments into that framework. They are committed to coming up with something that makes more sense.

CHAIRMAN KEATING asked if she felt somewhat assured the other people will work with you in all of this so if we do send it out, there will be collaboration?

Ann McIntyre answered, "yes".

Pat Haffey, Department of Labor said she thought they had identified the problem and where we're going to find the "fix". She would like the attorneys to take a look because of hearing about all the legal issues. She is committed to working with the group to make sure the bill is clean from a legalistic standpoint; however, from an administrative standpoint, she said she understands the message and is committed to being an active participant.

John Shontz, Montana Association of Realtors said he would like to echo what has been said regarding yesterday's meeting. There is one thought he said he wanted to share. That was if you are interested in the amendment, you might want to visit Section 4. Also, they set out a very ambitious work schedule for themselves which we all intend to keep.

Christine Kaufman, Human Rights Network asked that someone be there who represented the citizens of the state who face discrimination. She would be willing to do that.

Tom Hopgood, Lee Enterprises, Inc. said he didn't testify on this bill but did submit written comments. He said they have an abiding interest in one section of the bill and would like to enter into discussions with interested parties on this bill.

Dean Randash stated he would be in favor of what has been agreed to and would requested that he be included with those discussions.

SEN. DEBBIE SHEA said she would like to make a comment because she signed onto this bill. She thought they all need to do a lot of work with this Commission; however, wished this had started in the House and come over to be rectified.

Motion: SEN. STEVE BENEDICT MOVED DO PASS SB 350.

Discussion: SEN. SUE BARTLETT said she appreciated the good faith work by all parties and thinks it's pretty clear to everyone the form this bill is in will keep her from voting in favor of it.

Vote: MOTION TO PASS SB 350 PASSED 6-3.

{Tape: 3; Side: A; Approx. Time Count: 6:25 p.m.; Comments: N/A.}

EXECUTIVE ACTION ON SB 375

Motion: SEN. FRED THOMAS MOVED DO PASS ON SB 375.

Motion: SEN. FRED THOMAS MOVED DO PASS ON AMENDMENTS SB037501.AEM (EXHIBIT 17).

Discussion: Jacqueline Lenmark, American Insurance Association explained the amendments are technical and are consensus amendments. Amendment #1 amends the title; #2 makes the definition of paid losses in this bill track precisely with the paid losses in the Administrative Assessment Bill; #3 is clerical to make the use of the term consistent; #4 is to impose a limit on the total amount that would be retained in this subsequent injury fund, which is to act as reimbursement to insurers; #5 is to make it clear in law what is happening for insurers is they are being reimbursed for payment; #6 takes out a subsection nearly everyone thought was incomprehensible and confusing; #7 changes a reporting date so it matches precisely with a reporting date contained in the Administrative Assessment Bill; #8 is the same explanation; #9 is grammatical; #10 corrects a typographical error; #11 deletes the emergency assessment again; #12 tracks with the amendment; #13 makes the dates consistent with the other bill; #14 makes the policy surcharge permissive rather than mandatory; #15 deletes a reference to the emergency assessment; #16 & #17 removes the debatable procedural portions of the bill; the law will remain as it is now and there will be no amendment; #18 deletes the first three subsections of new Section 9. This section will not be codified; it is simply an instruction so the funds that are currently held in the Subsequent Injury Fund will be transferred to the Administrative Assessment Fund; #19 is the substantive language making that transfer; #20 concludes that transfer; #21 & #22 correct the 'codification and effective date sections for the renumbering that happened as a result of the deleted sections.

She wanted the committee to be very clear this sort of fund cannot create an unfunded liability. The insurers have to pay at the front of the process and then seek reimbursement from this fund; therefore, there will never be an unfunded liability in that sense. If an insurer did not pay benefits on a worker who was reimbursed, our respective guaranty funds would come into play and full benefits would be paid to the worker.

Amendments to Senate Bill No. 350
First Reading Copy

DATE 2-20-97
BILL NO. SB350

For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure
February 17, 1997

1. Title, lines 4 through 23.

Following: "REVISING THE"

Strike: remainder of line 4 through "CASES" on line 21

Insert: "PROCEDURES OF THE COMMISSION FOR HUMAN RIGHTS;
ESTABLISHING PROCEDURES AND REMEDIES FOR COMMISSION
COMPLAINTS AND COMPLAINTS OF PATTERNS OR PRACTICES OF
DISCRIMINATION"

Following: "SECTIONS" on line 21

Strike: remainder of line 21 through "49-2-305," on line 22

Strike: "49-2-503,"

Following: "49-2-505,"

Strike: "49-2-506,"

Following: "49-2-509,"

Insert: "AND"

Following: line 22

Strike: "AND 49-2-601,"

Following: "MCA;"

Insert: "REPEALING SECTIONS 49-3-304, 49-3-305, 49-3-306, 49-3-
307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312,
MCA;"

Following: "AN"

Strike: "IMMEDIATE"

Strike: "A RETROACTIVE"

Insert: "AN"

2. Page 1, line 28 through page 15, line 7.

Strike: everything after the enacting clause

Insert: "NEW SECTION. Section 1. Commission complaints. (1)

The commission may initiate a complaint under this chapter
by filing an action in district court within 1 year after
the alleged unlawful discrimination occurred or was
discovered.

(2) (a) If the court finds that the defendant has engaged
in the discriminatory practice alleged in the complaint, the
court shall order the defendant to refrain from engaging in the
discriminatory conduct and may prescribe conditions on the
defendant's future conduct relevant to the type of discriminatory
practice found. The court shall also prescribe measures to
remedy the harm, pecuniary or otherwise, to any person aggrieved
by the discriminatory conduct.

(b) If the defendant has been found to have committed a
previous violation of this chapter, the court may assess a civil
penalty:

(i) in an amount not exceeding \$10,000 if the person has
been found to have committed one prior discriminatory practice in

violation of this chapter during the 5-year period ending on the date of the filing of the complaint; or

(ii) in an amount not exceeding \$25,000 if the person has been found to have committed two or more other discriminatory practices in violation of this chapter during the 5-year period ending on the date of the filing of the complaint.

(3) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of this chapter or that a group of persons has been discriminated against in violation of this chapter and the violation raises an issue of general public importance, the commission may refer the matter to the attorney general to commence a civil action in an appropriate district court.

(b) The attorney general may file a civil action under this subsection (3) within 18 months after the alleged unlawful discriminatory practice occurred or was discovered.

(c) In a civil action under this subsection (3), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the person:

(i) in an amount not exceeding \$50,000 for a first violation; and

(ii) in an amount not exceeding \$100,000 for any subsequent violation.

(4) Upon timely application, a person may intervene in a civil action under this section with respect to which the intervenor is an aggrieved person.

(5) The court may award attorney fees to the prevailing party in an action under this section.

(6) Civil penalties under this section must be paid to the state treasurer and must be deposited in the general fund.

NEW SECTION. **Section 2. Exclusive remedy.** Except for claims arising under chapter 4, the provisions of this chapter establish the exclusive remedy for claims arising under state law for acts constituting an alleged violation of Title 49, chapter 3, or this chapter, including acts that may also constitute a violation of Article II, section 4, of the Montana constitution, or 49-1-102. A claim or request for relief under state law based upon the acts may not be entertained by a district court other than by the procedures provided for in this chapter.

NEW SECTION. **Section 3. Enforcement and remedies.** The procedures set forth in Title 49, chapter 2, part 5, apply to complaints alleging a violation of this chapter.

Section 4. Section 49-2-501, MCA, is amended to read:

"49-2-501. Filing complaints. (1) A complaint may be filed with the commission by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and

the particulars of the alleged discriminatory practice. ~~The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.~~

(2) (a) Except as provided in 49-2-510 and subsection (2) (b) of this section, a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein in this section may not be considered by the commission.

(3) When a discriminatory practice comes to the commission's attention, the commission may commence a civil action in an appropriate district court in accordance with the procedures provided in [section 1]."

Section 5. Section 49-2-504, MCA, is amended to read:

"49-2-504. Informal settlement investigation and conciliation. The commission staff shall notify the parties of a complaint within 10 working days of receipt. The notice must include a copy of the complaint. The commission staff shall informally investigate the matters set out in a filed the complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to attempt to achieve a resolution of the complaint by conference, conciliation, and persuasion that, in addition to providing redress for the complainant, includes conditions that eliminate the discriminatory practice by conference, conciliation, and persuasion identified in the investigation."

Section 6. Section 49-2-505, MCA, is amended to read:

"49-2-505. Contested case hearing. (1) If Except in cases alleging a violation of 49-2-305, if the informal staff efforts to eliminate the alleged discrimination resolve the complaint are unsuccessful, the staff shall inform the commission parties of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission hold a hearing on the complaint. The commission staff shall serve notice of the hearing, together with a copy of the complaint, on the parties.

(2) The hearing must be held by the commission in the county where the unlawful conduct is alleged to have occurred

~~unless the person, institution, entity, or agency charged in the complaint or the commission a party requests and is granted a change of venue for based upon a showing of good cause shown. The ease in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act except as provided in 49-2-508.~~

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for ~~attorneys'~~ attorney fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~ attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure."

Section 7. Section 49-2-508, MCA, is amended to read:

"49-2-508. Enforcement of commission order or conciliation agreement. ~~If the commission's a commission order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order. The commission or a party may also commence a civil action in an appropriate district court for relief for breach of a conciliation agreement.~~"

Section 8. Section 49-2-509, MCA, is amended to read:

"49-2-509. Filing Dismissal of complaint by commission staff -- filing of a complaint in district court. (1) Except as provided in subsection (2) or with respect to complaints alleging a violation of 49-2-305, the commission staff shall, at the request of either party, ~~issue a letter entitling the complainant to file a discrimination action in district court~~ dismiss the complaint if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to ~~permit removal of a case to district court~~ dismiss a complaint pursuant to subsection (1) if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within ~~90 days~~ 6 months of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed ~~under 49-2-501 and allow the complainant to file a discrimination~~

~~action in district court if:~~

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; ~~or~~

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence; or

(d) the commission staff determines that the commission will not hold a hearing within 12 months after the filing of the complaint and that the interests of fundamental fairness or the public interest support the dismissal of the complaint.

(4) A decision of the commission staff to dismiss a complaint or to refuse to ~~permit removal to the district court~~ dismiss a complaint is final unless a party seeks review by filing objections within 14 days after the decision is served on ~~him~~ the party. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (1) or (3) or of an order under subsection (4) of affirmance of a dismissal, whichever occurs later, ~~or of a letter issued under subsection (1),~~ the complainant may petition commence a civil action in the district court in the district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the ~~claimant~~ complainant fails to petition commence a civil action in the district court within 90 days after receipt of the ~~letter,~~ notice, or order issued by the commission or staff, the claim ~~shall~~ must be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

~~(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter."~~

Section 9. Section 49-2-510, MCA, is amended to read:

"49-2-510. **Procedures and remedies for enforcement of housing discrimination laws.** (1) A complaint may be filed with the commission by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within 1 year after the alleged unlawful discriminatory practice occurred or was discovered. Except as otherwise specified, the procedures set forth in this part apply to complaints alleging a violation of 49-2-305.

~~(2) (a) Except as provided in subsection (2) (b), if the commission, in a hearing under 49-2-505, finds that a person, institution, entity, or agency against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:~~

~~(i) in an amount not exceeding \$10,000 if the respondent has not been found to have committed any prior discriminatory housing practice in violation of 49-2-305;~~

~~(ii) in an amount not exceeding \$25,000 if the respondent has been found to have committed one other discriminatory housing practice in violation of 49-2-305 during the 5 year period ending on the date of the filing of the complaint; and~~

~~(iii) in an amount not exceeding \$50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7 year period ending on the date of the filing of the complaint.~~

~~(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2) (a) (ii) and (2) (a) (iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.~~

~~(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is in substance affirmed:~~

~~(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency; and~~

~~(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.~~

~~(4) (a) When a complaint is filed under 49-2-305, a complainant, respondent, or aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the complaint relates. Within 30 days after the election is made, If the commission staff has investigated a complaint alleging a violation of 49-2-305 and found substantial evidence to believe a violation has occurred, it shall attempt to resolve the complaint in accordance with 49-2-504. If efforts to resolve the complaint fail, the commission shall commence a civil action in an appropriate district court on behalf of the complainant or aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial~~

evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the commission staff shall dismiss the complaint and the complainant may commence a civil action in an appropriate district court in accordance with subsection ~~(5)~~(3). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene in the action.

~~(b) The commission may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).~~

~~(5)~~(3) (a) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 or subsection (1) of this section and without regard to the status of a complaint filed with the commission ~~except as provided in subsection (5)(d)~~. If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission may not continue administrative proceedings on a complaint after the beginning of a trial of a civil action commenced by the aggrieved party under this subsection ~~(5)~~(3) seeking relief with respect to the same alleged violation of 49-2-305.

~~(d) An aggrieved person may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission has commenced a hearing on the record under 49-2-505 regarding the same complaint.~~

~~(e)~~ Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection ~~(5)~~(3) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

~~(f)~~(e) Upon timely application, the commission may intervene in a civil action brought under this subsection ~~(5)~~(3) if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under ~~subsection (7)~~ [section 1].

(4) The district court shall provide for an expedited trial and other proceedings in a complaint under this section.

~~(6)-(5)(a)~~ If the court finds that a person, institution, entity, or agency against whom a complaint was filed under this section has engaged in a discriminatory practice in violation of 49-2-305, the court may, in addition to the other remedies and injunctive and other equitable relief provided under 49-2-506, award punitive damages. The court may also award attorney fees to the prevailing party.

(b) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the court shall, no later than 30 days after the date of the issuance of the judgment:

(i) send copies of the court's findings and order to the licensing or regulatory agency; and

(ii) recommend to the licensing or regulatory agency appropriate disciplinary action, including, when appropriate, the suspension or revocation of the license of the person.

~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.~~

~~(b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

~~(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:~~

~~(i) in an amount not exceeding \$50,000 for a first violation; and~~

~~(ii) in an amount not exceeding \$100,000 for any subsequent violation.~~

~~(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.~~

~~(8) Civil penalties under this section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement."~~

NEW SECTION. Section 10. {standard} Repealer. Sections 49-3-304, 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, and 49-3-312, MCA, are repealed.

NEW SECTION. Section 11. {standard} Codification instruction. (1) [Sections 1 and 2] are intended to be codified

as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, part 5, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 49, chapter 3, part 3, and the provisions of Title 49, chapter 3, part 3, apply to [section 3].

NEW SECTION. Section 12. {standard} Effective date -- applicability. [This act] is effective July 1, 1997, and applies to claims pending or filed with the commission on or after [the effective date of this act]."



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 21, 1997

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill 350 (first reading copy -- white), respectfully report that Senate Bill 350 do pass.

Signed: *Keating*
Senator Thomas F. Keating, Chair

TS Amd. Coord.
ST Sec. of Senate

410959SC.STS

DATE 2-20-97

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 25, 1997, at
8:00 AM, in Room 104

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 316; SB 304; SB 350
(3/5/97)
Executive Action: SB 316; SB 304; SB 331; SB
190; SB 181

HEARING ON HB 350

Opening Statement by Sponsor: Senator McNutt, S.D. 50 introduced the bill. EXHIBITS 1 AND 2.

{Tape: 1; Side: 1; Approx. Time Count: 2.0; Comments: None.}

Proponents' Testimony:

Rep. Paul Sliter, H.D. 76

{Tape: 1; Side: 1; Approx. Time Count: 11.1; Comments: None.}

David Owen, MT Chamber of Commerce

{Tape: 1; Side: 1; Approx. Time Count: 14.4; Comments: None.}

Pat Etchardt, Chairman, Human Rights Commission. EXHIBIT 3.

{Tape: 1; Side: 1; Approx. Time Count: 19.0; Comments: None.}

John Shontz, MT Assn. Realtors

{Tape: 1; Side: 2; Approx. Time Count: 29.0; Comments: None.}

Don Chance, MT Building Industries Assn.

{Tape: 1; Side: 2; Approx. Time Count: 2.0; Comments: None.}

Rhonda Carpenter, MT Housing Suppliers, Exec. Dir.

{Tape: 1; Side: 2; Approx. Time Count: 7.2; Comments: None.}

Charles Brooks, Billings Chamber of Commerce

{Tape: 1; Side: 2; Approx. Time Count: 8.4; Comments: None.}

Kathy Orgen, Human Rights Commission Member

{Tape: 1; Side: 2; Approx. Time Count: 9.9; Comments: None.}

Jane Lopp, Human Rights Commission, Member, EXHIBIT 4 AND 5.

{Tape: 1; Side: 2; Approx. Time Count: 15.7; Comments: None.}

Pat Haffey, Commission of Labor

{Tape: 1; Side: 2; Approx. Time Count: 26.8; Comments: None.}

Riley Johnson, National Federation of Businessmen

{Tape: 2; Side: 1; Approx. Time Count: 3.4; Comments: None.}

Kathleen Schulte, N. Mont Assn. Realtors

{Tape: 2; Side: 1; Approx. Time Count: 4.9; Comments: None.}

Mr. Dean Randash, businessman NAPA Auto. EXHIBIT 6.

{Tape: 2; Side: 1; Approx. Time Count: 8.5; Comments: None.}

Rodney Svee, Hardin, MT Member Human Rights Commission

{Tape: 2; Side: 1; Approx. Time Count: 11.4; Comments: None.}

Evelyn Stevenson, Pablo, MT, Member Human Rights Commission

{Tape: 2; Side: 1; Approx. Time Count: 20.0; Comments: None.}

Opponents' Testimony:

Mike Meloy, Helena Attorney

{Tape: 2; Side: 1; Approx. Time Count: 25.7; Comments: None.}

Kate Cholewa, MT Womens Society. EXHIBIT 8

{Tape: 2; Side: 2; Approx. Time Count: 5.5; Comments: None.}

Al Smith, MT Advocacy Program. EXHIBIT 7.

{Tape: 2; Side: 2; Approx. Time Count: 7.9; Comments: None.}

Don Judge, AFL-CIO

{Tape: 2; Side: 2; Approx. Time Count: 11.5; Comments: None.}

Christine Kaufman, MT Human Rights Network

{Tape: 2; Side: 2; Approx. Time Count: 12.6; Comments: None.}

Betty Waddell, MT Coalition of Churches. EXHIBIT 9

{Tape: 2; Side: 2; Approx. Time Count: 22.8; Comments: None.}

Sharon Hoff, MT Catholic Conference

{Tape: 3; Side: 1; Approx. Time Count: .01; Comments: None.}

Mary Westwood, Director of Government Relations, MT Sulphur and Chemical. EXHIBIT 10.

{Tape: 3; Side: 1; Approx. Time Count: 4.1; Comments: None.}

Brain Garrity, Helena, MT

{Tape: 3; Side: 1; Approx. Time Count: 12.4; Comments: None.}

Rick Moser, Past member of Human Rights Commission

{Tape: 3; Side: 1; Approx. Time Count: 13.; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 3; Side: 1; Approx. Time Count: 19.2; Comments: None.}

Closing by Sponsor: Sen. Cole closed. Rep. Holland to carry.

{Tape: 3; Side: 2; Approx. Time Count: 8.0; Comments: None.}

HEARING ON SB 316

Opening Statement by Sponsor: Senator Bartlett, S. D. 27

introduced the bill, EXHIBIT 12.

{Tape: 3; Side: 2; Approx. Time Count: 9.3; Comments: None.}

Proponents' Testimony:

Pat Chenovick, Supreme Court Employee

{Tape: 3; Side: 2; Approx. Time Count: 12.2; Comments: None.}

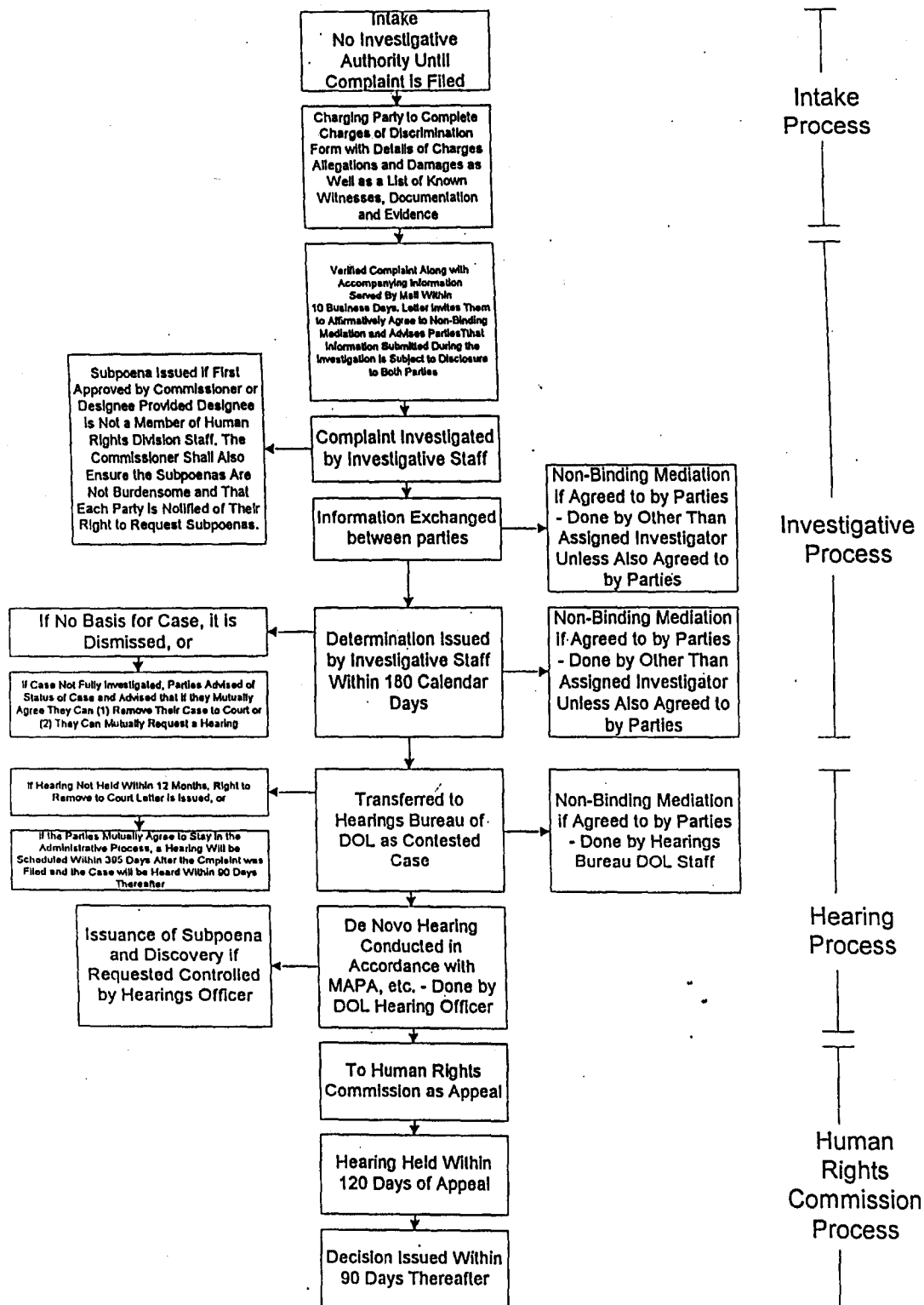
Jacqueline Lenmark, Attorney and State Bar of Montana

{Tape: 3; Side: 2; Approx. Time Count: 13.5; Comments: None.}

Opponents' Testimony: None

**HUMAN RIGHTS NON-HOUSING
COMPLAINT PROCESS**
Administrative Process
March 21, 1997

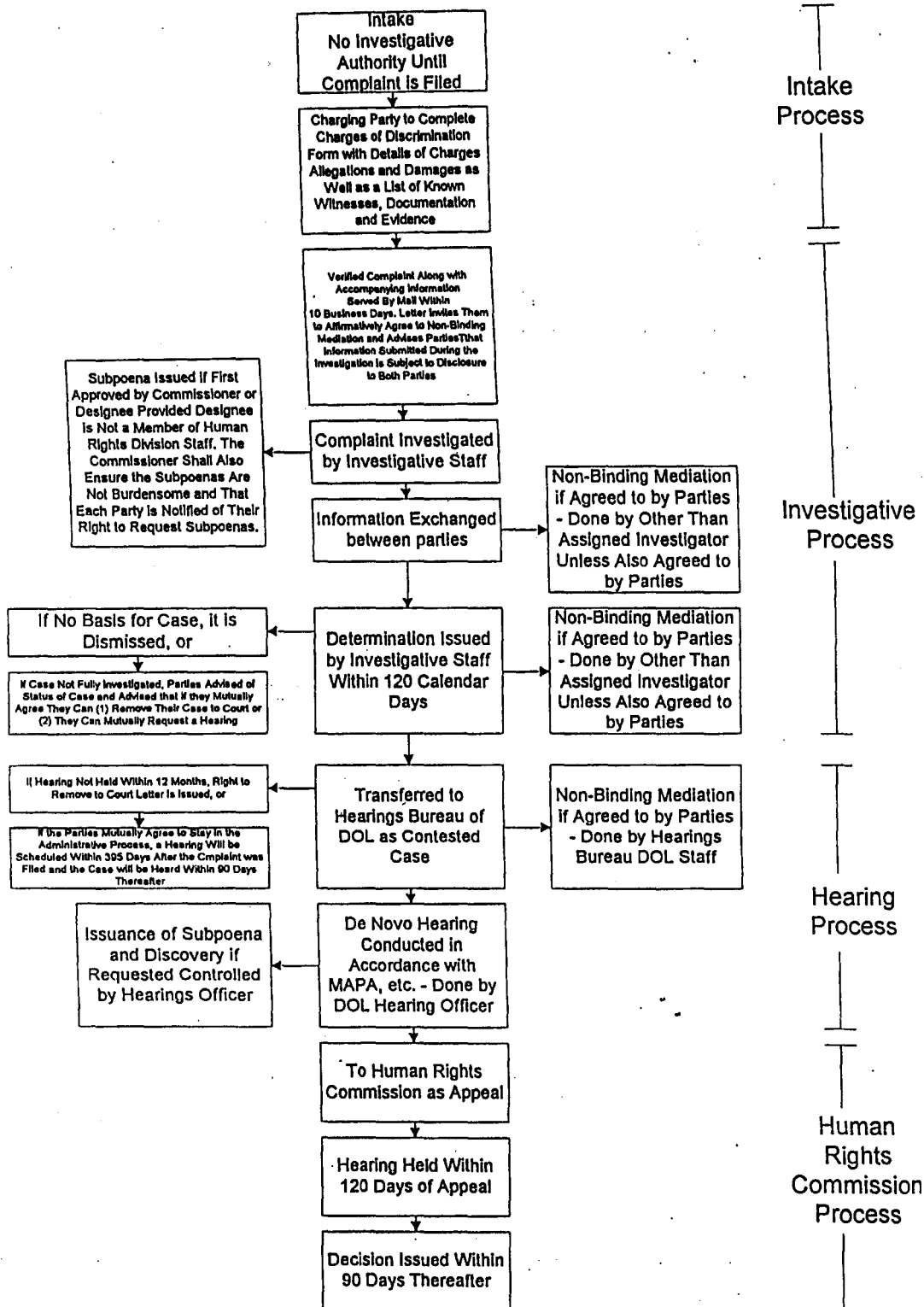
DATE 3/25/97
SB 350



HUMAN RIGHTS HOUSING COMPLAINT PROCESS

Administrative Process

March 21, 1997



AMBIT 2
DATE 3/25/97
SB 350

Amendments to Senate Bill NO. 350
Third Reading Copy

Requested by Senator McNutt
For the Committee on Business and Labor

Prepared by Greg Petesch
March 19, 1997

1. Title, line 6.
Following: " ; "
Insert: "TRANSFERRING THE STAFF OF THE COMMISSION TO THE
DEPARTMENT OF LABOR AND INDUSTRY;"
2. Title, line 7.
Strike: "COMMISSION STAFF"
Insert: "DEPARTMENT"
3. Title, line 8.
Strike: "COMMISSION TO ADOPT"
Insert: "THE ADOPTION OF"
4. Title, line 10.
Strike: "ITS"
5. Title, line 13.
Strike: "COMMISSION"
Insert: "COMMISSIONER"
Strike: "NOT"
6. Title, lines 14 and 15.
Strike: "COMMISSION STAFF" on line 14
Insert: "THE DEPARTMENT"
Following: "WITHIN" on line 14
Strike: remainder of line 14 through "DAY" on line 15
Insert: "10 BUSINESS DAYS"
Strike: "COMMISSION"
Insert: "DEPARTMENT"
7. Title, line 16.
Strike: "COMMISSION STAFF"
Insert: "THE DEPARTMENT"
8. Title, line 18.
Strike: "COMMISSION"
Insert: "DEPARTMENT"
9. Title, lines 19 and 20.
Following: " ; " on line 19
Strike: remainder of line 19 through "NOVO;" on line 20
10. Title, line 21.
Following: "2-15-1706,"
Insert: "39-1-102, 49-2-101,"

11. Title, line 23.

Following: ";

Insert: "REPEALING SECTION 49-2-502, MCA;"

12. Page 1, line 29.

Strike: "commission"

13. Page 1, line 30.

Strike: "of labor"

14. Page 2, line 1.

Strike: "commission staff"

Insert: "department"

15. Page 2, line 2.

Insert: "or assist"

16. Page 2, line 3.

Following: "commission"

Insert: "and the department"

17. Page 2, line 4.

Following: "."

Insert: "It is not the intent of the legislature that the department be prohibited from dismissing matters or referring matters to other agencies following an initial inquiry and interview."

18. Page 2, line 17.

Insert: " Section 3. Section 39-1-102, MCA, is amended to read:

"39-1-102. **Duties of department.** The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor ~~which that~~ regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws. The department shall investigate and enforce the laws prohibiting discrimination contained in Title 49, chapters 2 and 3, and provide a means for conciliation between parties."

Section 4. Section 49-2-101, MCA, is amended to read:

"49-2-101. **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

~~(2)~~ (3) "Commission" means the commission for human rights provided for in 2-15-1706.

(4) "Commissioner" means the commissioner of labor and

industry provided for in 2-15-1701.

~~(3)~~(5) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

~~(4)~~(6) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

~~(5)~~(7) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

~~(8)~~ "Department" means the department of labor and industry provided for in 2-15-1701.

~~(6)~~(9) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

~~(7)~~(10) "Employee" means an individual employed by an employer.

~~(8)~~(11) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

~~(9)~~(12) "Employment agency" means a person undertaking to procure employees or opportunities to work.

~~(10)~~(13) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

~~(11)~~(14) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

~~(12)~~(15) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

~~(13)~~(16) "National origin" means ancestry.

~~(17)~~(a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

~~(b)~~ The term does not include a labor organization.

~~(14)~~(18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

~~(15)~~ (19) (a) "Physical or mental disability" means:
(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;
(ii) a record of such an impairment; or
(iii) a condition regarded as such an impairment.
(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

~~(16)~~ (20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection ~~(16)~~ (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

~~(17) "Staff" or "commission staff" means the staff of the commission for human rights."~~
Renumber: subsequent sections

19. Page 2, line 21.
Strike: "either under investigation by"

20. Page 2, line 22.
Strike: "or"

21. Page 2, line 24.
Following: line 23
Insert: "(2) The department's staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner's authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production, for examination, of books, papers, or other intangible evidence."

(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2)."
Renumber: subsequent subsection

22. Page 2, line 28.
Strike: "Commission to adopt rules"
Insert: "Rules"
Following: "."
Insert: "(1)"

23. Page 2, line 29.
Following: "implement"
Insert: "the commission's responsibilities under"

24. Page 3, line 2.
Strike: "a portion of the Montana Code of Criminal Procedure,"
Insert: "the procedural provisions of Title 46"

25. Page 3, line 3.
Following: line 2
Insert: "(2) The department shall adopt procedural and substantive rules necessary to implement the department's responsibilities under this chapter. Rules adopted under this chapter must comply with the Montana Administrative Procedure Act. For contested case hearings conducted pursuant to 49-2-505, the department shall adopt the Montana Rules of Civil Procedure and the Montana Rules of Evidence."

26. Page 7, line 7.
Strike: "person"
Insert: "party"
Following: "filed"
Insert: "with the department"

27. Page 7, line 8.
Following: "."
Insert: "(2) A complaint may be filed on behalf of a party claiming to be aggrieved by a discriminatory practice prohibited by this chapter if the person acting on behalf of the aggrieved party is the aggrieved party's guardian, attorney, duly authorized representative, or an advocacy group or other organization acting as an authorized representative. (3)"
Renumber: subsequent subsections

28. Page 7, line 9.
Strike: "person"
Insert: "party"

29. Page 7, line 13.
Strike: "(2) (b) "
Insert: "(4) (b) "

30. Page 7, line 14.
Strike: "commission"

Insert: "department"

31. Page 7, line 24.

Following: "commission"

Insert: "or the department"

32. Page 7, line 28.

Following: "of"

Insert: "the commissioner or"

33. Page 8, line 2.

Strike: "settlement"

Insert: "investigation and conciliation"

Following: "."

Insert: "(1) (a)"

Strike: "commission staff"

Insert: "department"

34. Page 8, line 3.

Strike: "a filed"

Insert: "the"

Strike: "staff"

Insert: "department"

35. Page 8, line 4.

Strike: "immediately try to"

Insert: "attempt to achieve a resolution of the complaint by
conference, conciliation, and persuasion that, in addition
to providing redress for the complaint, includes conditions
that"

36. Page 8, line 5.

Strike: "by conference, conciliation, and persuasion"

Insert: ", if any, identified in the investigation"

Strike: "staff"

Insert: "department"

Strike: "upon the first working day"

Insert: "within 10 business days"

37. Page 8, line 8.

Strike: "commission or its staff"

Insert: "department"

Following: "."

Insert: "The department may not investigate a complaint until it
has received notice that the respondent has received the
department's notification of the complaint.

(b) If a complaint is filed pursuant to 42 U.S.C. 2000a, et
seq. and if the commissioner decides that the inclusion of
documents or information contained in the complaint would
seriously impede the rights of a person or the proper
investigation of the complaint, the information may be excluded
from the notification by providing a written summary of the
information contained in the complaint. The written summary must
include sufficient information to give maximum effect to the
intent of this chapter.

(2) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint.

(3) The department shall commence proceedings within 30 days after receipt of a complaint.

(4) The department shall make a finding regarding the merit or nonmerit of the complaint within 180 days after a complaint is filed, except that the department shall make the finding within 120 days after a complaint is filed under 49-2-305."

38. Page 8, line 12.

Strike: "staff"

Insert: "department"

39. Page 8, lines 13 through 15

Following: "shall" on line 13.

Strike: remainder of line 13 through "commission" on line 15

Insert: "hold a hearing on the complaint. The department shall serve notice of the hearing, together with a copy of the complaint and all other information in the possession of the department that is not currently in the possession of the parties or a party, on the parties"

Following: line 15

Insert: "(2) (a) If the parties mutually agree to permit the department or the commission to retain jurisdiction of the case under this chapter for a period of time not to exceed 12 months after the complaint was filed, then the parties shall stipulate to a schedule for proceedings to be established by the department.

(b) The department shall, not later than 395 days after the complaint was filed, set a date for an administrative hearing in the case.

(c) The case must be heard no later than 90 days after the date is set by the department. The department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good cause."

40. Page 8, line 16.

Strike: "(2)"

Insert: "(3) (a)"

Strike: "commission"

Insert: "department"

41. Page 8, line 17.

Strike: "the person, institution, entity, or agency"

Insert: "a party"

42. Page 8, line 18.

Following: "requests"

Insert: "and is granted"

43. Page 8, line 19.

Strike: "commission"

Insert: "department"

44. Page 8, line 22.

Following: line 21

Insert: "(b) Upon request of the hearings officer, the department may present evidence with regard to activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601. et seq., the department may not represent either party in a contested case hearing.

(3) A party may appeal a decision of the hearings officer to the commission. A party shall provide notice of its appeal to the commission, the department, and all parties within 10 business days of receipt of the notice of decision of the administrative hearing. The commission shall hear all appeals within 120 days of receipt of notice of appeal. The commission shall render a decision within 90 days of hearing the appeal.

(4) All hearings conducted under this section may, upon stipulation of the parties, be heard telephonically."

Renumber: subsequent subsections

45. Page 8, lines 29 and 30.

Following: "commission" on line 29

Insert: "or the department, after a hearing,"

Following: "a" on line 29

Strike: remainder of line 29 through "agency" on line 30

Insert: "party"

46. Page 9, line 1.

Following: "commission"

Insert: "or the department"

Following: the first "the"

Strike: remainder of line 1

Insert: "party"

47. Page 9, line 8.

Strike: "The"

Insert: "Except as provided in 49-2-510, the"

48. Page 9, lines 10 and 11.

Following: the first "commission" on line 10

Insert: "or department"

Following: "the" on line 10

Strike: remainder of line 10 through "staff" on line 11

Insert: "department"

49. Page 9, line 15.

Following: "commission"

Insert: "or department"

Following: "order"

Insert: "or conciliation agreement"

Strike: "commission's"

Following: "order"

Insert: "issued under 49-2-506"

50. Page 9, line 16.

Following: "ex"
Insert: "the commissioner or"

51. Page 9, line 17.
Following: "commission's"
Insert: "or department's"

52. Page 9, line 18.
Following: "."
Insert: "The commissioner or a party may also commence a civil
action in an appropriate district court for relief for a
breach of a conciliation agreement."

53. Page 9, line 22.
Strike: "commission staff"
Insert: "department"

54. Page 9, line 24.
Following: "court"
Insert: ", unless the action involves an employment-related
matter,"
Following: "if"
Insert: ":",

55. Page 9, line 25.
Following: "{a}"
Insert: "(a)"
Strike: "commission"
Insert: "department"
Following: "and"
Insert: "; or"

56. Page 9, line 26.
Following: "filed"
Insert: "(b) 12 months have elapsed since the complaint was filed
and the action involves an employment-related matter"

57. Page 9, line 27.
Strike: "commission"
Insert: "department"

58. Page 10, line 2.
Strike: "commission"
Insert: "department"

59. Page 10, line 4.
Strike: "commission staff"
Insert: "department"

60. Page 10, line 5.
Strike: "commission"
Insert: "department"

61. Page 10, line 7.
Following: "commission"

Insert: "or department"

62. Page 10, line 8.

Strike: "staff's"

63. Page 10, line 9.

Strike: "commission"

Insert: "department"

Strike: "or"

64. Page 10, line 11.

Strike: "substantial"

Insert: "a preponderance of the"

Following: "evidence"

Insert: "; or (d) the department determines that the department
or the commission will not or cannot hold a hearing within
12 months after the filing of the complaint"

65. Page 10, line 12.

Strike: "commission"

Insert: "department"

66. Page 10, line 14.

Strike: "commission"

Insert: "department"

67. Page 10, line 16.

Strike: "commission"

Insert: "department"

Strike: "part"

Insert: "section"

68. Page 10, line 18.

Following: "subsection"

Insert: "(1) or"

69. Page 10, line 20.

Strike: "petition"

Insert: "commence a civil action in"

70. Page 10, line 21.

Strike: "claimant"

Insert: "complainant"

Strike: "petition"

Insert: "commence a civil action in"

71. Page 10, line 22.

Strike: "staff"

Insert: "or the department"

72. Page 10, line 29.

Following: "violation of"

Insert: "chapter 3 or"

73. Page 10, line 30.

Strike: "Another"
Insert: "A"

74. Page 11, line 6.
Strike: "commission"
Insert: "department"
Following: "ef"
Insert: "or on behalf of"
Strike: "person"
Insert: "party"

75. Page 11, line 7.
Following: "form"
Insert: ", verified by the aggrieved party,"

76. Page 11, line 8.
Strike: "commission"
Insert: "department"
Strike: "20"
Insert: "180"

77. Page 11, line 10.
Following: "commission"
Insert: "or the department"

78. Page 11, line 11.
Strike: "person, institution, entity, or agency"
Insert: "party"

79. Page 11, line 12.
Strike: "commission"
Insert: "department"

80. Page 12, line 12.
Strike: "commission"
Insert: "department"
Strike: "other"
Following: the second "and"
Insert: "other"

81. Page 12, line 14.
Following: "complainant"
Insert: ", the commissioner, or the aggrieved party"
Strike: "shall"
Insert: "may"

82. Page 12, line 19.
Following: "~~action~~"
Insert: "on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection

(5). An aggrieved party with respect to the issues to be determined in a civil action brought by the department may intervene in the action"

83. Page 12, line 20.
Strike: "commission"
Insert: "department"

84. Page 12, line 22.
Strike: "person"
Insert: "party"

85. Page 12, line 29.
Strike: "person"
Insert: "party"

86. Page 13, line 1.
Strike: "commission" in 2 places
Insert: "department"

87. Page 13, line 2.
Strike: "person"
Insert: "party"

88. Page 13, line 3.
Strike: "person"
Insert: "party"

89. Page 13, lines 5 and 6.
Following: "commission" on line 5
Insert: "or the department"
Following: "after the" on line 5
Strike: remainder of line 5 through "trial" on line 6
Insert: "filing"

90. Page 13, line 8.
Strike: "person"
Insert: "party"

91. Page 13, line 9.
Following: "commission"
Insert: "or the department"

92. Page 13, line 21.
Strike: "person, institution, entity, or agency"
Insert: "party"

93. Page 14, line 12.
Following: "(7)"
Insert: "(a)"
Strike: "All"
Insert: "Except as provided in subsection (7)(b), all"

94. Page 14, line 16.
Following: line 15

Insert: "(b) Damages or administrative penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party."

95. Page 14, lines 18 and 19.

Following: "a" on line 18

Strike: remainder of line 18 through "agency" on line 19

Insert: "party"

96. Page 14, lines 21 and 22.

Following: "commission" on line 21

Strike: ", "

Insert: "or"

Following: "department" on line 21

Strike: remainder of line 21 through "representatives" on line 22

97. Page 14, line 25.

Strike: "person" in 2 places

Insert: "party"

Strike: "section"

Insert: "title"

98. Page 14, line 26.

Strike: "person's"

Insert: "party's"

99. Page 14, line 27.

Insert: "NEW SECTION. Section 17. Enforcement. (1) When a possible violation of this part comes to the attention of the department, the department may:

(a) refer that possible violation to a third party for investigation; or

(b) advise the party engaged in the possible violation, in writing, that the party may be violating this part.

(2) Multiple notices received by a party to cease an activity violating this part may serve to establish any requisite mental state required under this title.

NEW SECTION. Section 18. Enforcement and remedies. The procedures set forth in chapter 2, part 5, apply to complaints alleging a violation of this chapter.

NEW SECTION. Section 19. Staff transfer. The staff of the commission is transferred to the department. The staff is under the direction and control of the commissioner of labor and industry. The staff shall perform functions as directed and in accordance with the express and implied purposes of [this act]. The transfer of staff is subject to 2-15-131 through 2-15-137.

NEW SECTION. Section 20. Repealer. Section 49-2-502, MCA, is repealed."

Renumber: subsequent sections

100. Page 14, line 28.

Strike: "instruction"
Insert: "instructions"
Following: "."
Insert: "(1)"
Strike: "Section"
Insert: "Sections"
Following: "1"
Insert: "and 17"
Strike: "is"
Insert: "are"

101. Page 14, line 30.
Strike: "section"
Insert: "sections"
Following: "1"
Insert: "and 17"

102. Page 15, line 1.
Following: page 14
Insert: "(2) [Section 18] is intended to be codified as an
integral part of Title 49, chapter 3, part 3, and the
provisions of Title 49, chapter 3, part 3, apply to [section
18]."
Following: "applicability"
Insert: "-- savings"
Following: "."
Insert: "(1)"

103. Page 15, line 6.
Insert: "(2) Except as provided in subsection (1), [this act]
does not affect any administrative or judicial proceeding
pending or commenced prior to [the effective date of this
act]."

**ADDITIONAL AMENDMENTS REQUIRED TO SB350
PRESENTED BY HUMAN RIGHTS COMMISSION
HOUSE BUSINESS AND LABOR COMMITTEE
March 25, 1997**

1. **The bill does not maintain the Commission as an independent hearing body.** After arguing strenuously that the law should provide for separation of the hearing function from the investigative function, the current amendments put the hearing function in the department. The Commission continues as an appeal body. This eliminates a meaningful function for the Commission as an entity.
2. **Department ability to file a complaint not maintained.** The new language proposed in the amendments (Section 17, Enforcement) does not accomplish permit state enforcement of the law. Most administrative enforcement processes allow for state enforcement in appropriate circumstances and this area of the law should be the same. The bill should include a provision which allows the department to have some ability to initiate a complaint in appropriate circumstances.
3. **The bill would not permit the state to maintain HUD equivalency.** There are a number of issues here, including:
 - The advertising defense (sections 5 and 16 of the bill)
 - The effort in the amendments to restrict the ability of private fair housing groups to file complaints and receive damages. This appears to be the purpose behind the definitions of aggrieved party and organization contained in the proposed amendment to the definition section, the proposed amendment restricting organizations to filing complaints "on behalf of" and aggrieved party, and the proposed limitations on organizational damages. The language is extremely ambiguous, and a strong case can be made that it does not achieve its objective, but it is sure to raise red flags for HUD.
 - The preponderance of the evidence standard at page 8, line 4 of the bill, and in the proposed amendments. The standard for an investigative finding under the federal Fair Housing Act is "reasonable cause".
 - The 120 day standard for completing investigations contained in the proposed amendments. The standard under the Fair Housing Act is 100 days, unless it is impracticable to do so. Although very few cases are completed within 100 days, the longer investigative time will be a problem for HUD.
 - The concept that contained in the proposed amendments that the department can lose jurisdiction of the complaint prior to completion of the investigation
 - The provision allowing respondent to remove a case to court immediately upon filing at page 9, line 20 through page 10, line 4. Although the proposed amendments contain an exception to this procedure for employment cases, the department would not be permitted 12 months to investigate and attempt to resolve cases involving housing, public accommodations, and so on. The

respondent could deprive the department of jurisdiction on day 1 by requesting removal to court.

- Reduction of the statute of limitations for housing discrimination complaints from 1 year to 180 days at page 11, line 8 of the bill. The bill provides for 90 days but the proposed amendments increase the time to 180. Although this is not technically an equivalency issue, the statute of limitations for filing with HUD is 1 year, and the change will result in Montana cases being filed with HUD that they will have to investigate.
- The imposition of a punitive damages standard on the ability to assess civil penalties at page 11, line 14 of the bill.
- Other changes to the standards and amounts of civil penalties for housing discrimination violations. Language at page 11, lines 19 and 20 adds the words "more similar" and "repeated". The maximum amount of penalty is reduced at page 11, lines 22 to 24, and the ability to impose a higher penalty for acts committed by the same natural person is eliminated at page 11, lines 25 to 29.
- The ability to recommend disciplinary action to a licensing board is eliminated at page 12, lines 6 - 7.
- A provision that the department may not continue administrative proceedings after the filing of a civil action is added in the amendments. The Fair Housing Act is the same as the current Montana law in this respect (i.e. the department cannot continue administrative proceedings after the beginning of a trial).
- The elimination of the state's ability to intervene in a civil action brought by a third party at page 13, lines 18 - 20.
- The addition of a requirement that respondent have been adjudicated to have committed a previous discriminatory practice before punitive damages are available in a civil action (assuming punitive damages are available at all) at page 13, line 22.
- The unavailability of punitive damages in a civil action (page 13, line 25).
- The limitation of attorney fees to a "substantively" prevailing party (page 13, line 26).
- The elimination of the state's ability to bring a pattern and practice action (page 13, line 27 through page 14, line 11).
- The inclusion of a self-incrimination defense to any action brought under Title 49, including a civil action (page 14, line 25 - 26, as addressed in the proposed amendments).

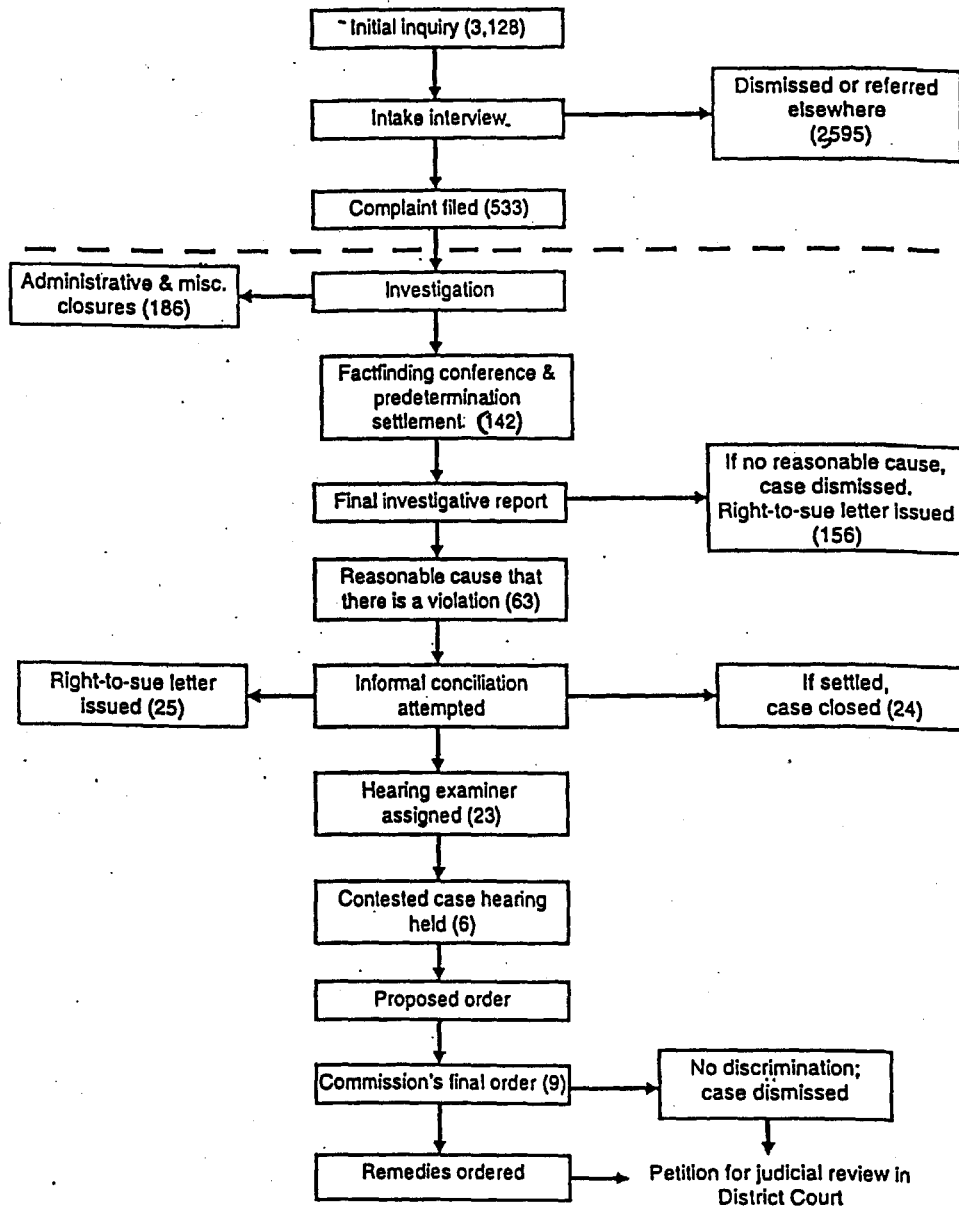
Although one of these issues alone might not be enough to deny HUD substantial equivalency, there are still so many problems that it is unlikely that Montana will maintain equivalency under the current state of the bill. In addition to subjecting parties to dual procedures, this will result in the loss of about \$200,000 per year in HUD funding to the state, based on the executive budget.

4. **The bill continues to have an immediate effective date.** This is unreasonable in a reorganization. We believe it should be October 1, 1997, in order to allow the completion of current federal contract obligations. At the earliest, it should be July 1, 1997.
-

HUMAN RIGHTS COMMISSION PROCEDURAL FLOW CHART

EXHIBIT 4
DATE 3/25/97
SB 350

Numbers in parentheses are fiscal year 1994 totals. Those below broken line include cases from previous fiscal year inventory (so numbers do not add). Some intermediate steps omitted.



FLATHEAD SETTLEMENTS REACHED PRIOR TO FAIR HOUSING

By Name of Person/Firm/Agency and Type of Discrimination and Civil Penalties and Other Amounts Paid

NAME	TYPE OF DISCRIMINATION	CIVIL PENALTIES	OTHER AMOUNTS PAID
Flathead Board of Realtors, n/ka Northwest Montana Association of Realtors NMAR	Familial Status	0	0 ¹
David J. Walker	Familial Status	0	\$100.00 to NMAR
Robert J. Nadvornick	Familial Status	0	\$100.00 TO NMAR
Billie Erickson	Familial Status	0	\$100.00 to NMAR
Greg Garrison	Familial Status	0	\$100.00 to NMAR
Nick Hansen	Familial Status	0	\$100.00 to NMAR
Paul Wachholtz	Familial Status	0	\$100.00 to NMAR
Coldwell Banker	Familial Status	0	\$2,000.00 to NMAR
Randy Shelton	Familial Status	0	\$100.00 to NMAR
Carolyn Atkinson	Familial Status	0	\$100.00 to NMAR
Melissa Loomis	Familial Status	0	\$100.00 to NMAR
Phil Neuharth	Familial Status	0	\$100.00 TO NMAR
Re/Max	Familial Status	0	\$1,000.00 to NMAR
Vicki Olson	Familial Status	0	\$100.00 to NMAR
Fairway Development Corp.	Familial Status	0	\$100.00 to NMAR
Fairway Boulevard	Familial Status	0	0
Rawlings, Forrest Hills	Familial Status	0	0
Flathead County	Familial Status	0	0
Patty Seaman Homes	Familial Status	0	0
Chuck Olson	Familial Status	0	\$500.00 to NMAR
TOTALS		0	4,700.00 ²
	Average	0	\$235 per person, firm, agency violating fair housing laws

¹Although evidence collected demonstrates that the Flathead Board of Realtors had engaged in at least 27 violations of the fair housing laws through its multiple listing service in an eight month period during 1994-1995, the Board, now NMAR, paid no amounts as a result of the discrimination practiced. Instead NMAR received \$3,700 in payments from the remaining persons listed below as part of the settlement agreements with the HRC. A search of the fair housing case law literature has located no comparable case where a party that engaged in multiple violations of the fair housing laws was actually paid monies to settle and conciliate a case.

² Although the total sum does represent an amount paid by the individual agents and firms to a third party, the fact that the monies went to NMAR and that all of the agents and firms are members of NMAR indicates that the members actually paid sums for their own use and benefit as an association.

FLATHEAD SETTLEMENTS REACHED BY THE FAIR HOUSING ENFORCEMENT PROJECT

NAME	TYPE OF DISCRIMINATION	CIVIL PENALTIES	OTHER PAYMENTS PAID
Rod Bitney, Exclusive Broker doing business as Village Greens Properties	Familial Status	0	\$2500.00 to charitable organization, nonprofit developer of family housing in Flathead, Habitat for Humanity
Glacier Village Greens, Inc., George Schulz and Duane Bitney, Owners	Familial Status	0	0 ¹
Century 21 Home and Investment Center Inc., Larry Lee, Owner/Broker	Familial Status	0	\$1500.00 to charitable organization, nonprofit developer of family housing, Habitat for Humanity and \$1000.00 to HRC to reimburse deposition expenses
TOTALS		0	\$4,000
Average			\$2,000/case

FEDERAL FAIR HOUSING CASES - MONTANA (1994-1995)

By Name of Defendants/Type of Housing Provider/Amounts Awarded or Paid in Settlement

NAME	TYPE/LOCATION OF HOUSING	AMOUNT AWARDED OR PAID IN SETTLEMENT
Verlin/Cheryl Hale	Residential Rental Properties and Subdivisions (Yellowstone County, Montana)	\$38,100
Richard/Donald Lee	Residential Rental Apartments (Billings, Montana)	\$65,000 (including \$10,000 civil penalty)
TOTAL		\$103,100
Average		\$51,250/case

¹ Under the settlement agreement between the Commission and Glacier Village Greens, Inc., the developer and owner of illegally constituted adults only subdivision was not required to pay any amounts to third parties that was unrelated to its management, operation and marketing of the subdivision. The developer was required to direct \$24,000 to upgrade its facilities to provide accessibility for disabled persons, to install playground facility for children in the common use area, and to advertise properties as available to families with children. Since all those payments should directly enhance the value of the subdivision property, the payments were considered a direct benefit to the developer and represented no actual loss.

FEDERAL FAIR HOUSING CASES - HUD ADMINISTRATIVE PROCESS

By Type of Discrimination/General Description, State Where Property Located, Amounts Paid, Civil Penalties and Totals⁴

NAME/TYPE/GENERAL DESCRIPTION	STATE	AMOUNTS PAID	CIVIL PENALTIES	TOTAL
TEMS Associates-Familial Status-Adults Only Subdivision	FLA	\$1,250	\$4,000	\$5,250
Canter -Familial Status - Mobile Home Park/Sales	PA	10,000	2,500	12,500
Frisbie-Familial Status-Apartment Rental	MO	4,000	2,000	6,000
Wagner -Familial Status-Apartment Rental	WI	2,000	11,250	13,250
Kelly- Familial Status-Apartment Rental	OH	10,430	-	10,430
Lewis-Familial Status-Apartment Rental	MO	8,439	3,500	11,939
Paradise Gardens-Familial Status-Adults Only Subdivision	WI	7,500	3,200	10,700
Ocean Park, Inc.-Familial Status Adults Only Subdivision	FLA	20,500	-	20,500
Ocean Sands -Familial Status-Adults Only Subdivision	FLA	28,870	3,500	32,370
Jancik-Familial Status-Apartment Rental Advertising	ILL	23,400	10,000	33,400
Nelson - Familial Status - Mobile Home Park and Sales ⁵	FLA	7,500	5,000	12,500
SAMS - Familial Status-House Rental	W.Va.	25,621	5,250	30,871
Kormoczy-Familial Status-Apartment Rental/Advertising	ILL	10,000	7,000	17,000
Schitzer-Familial Status-Condominium Sales/Bylaws	WI	2,500	2,250	4,750
Colber-Familial Status-Apartment Rentals	WI	6,280	5,000	11,280
Ineichen-Familial Status Townhouse Sales/Bylaws	WI	11,613	3,500	15,113
TOTALS		\$179,963	\$48,200	\$247,853
Average		\$11,244/case	\$3,012/case	\$15,490/case

⁴ Select Familial Status cases where damages and/or civil penalties awarded in administrative adjudication process and cases parallel or are substantially to violations identified in Flathead County, Montana. All decided during three year period (1992-1995). Cases from California/New York excluded.

⁵ Fact Pattern Similar to Rawlings Mobile Homes, Flathead County.

SB350

BIT 6
3/25/97
SS 350

**Employee FIRST complaint filed against employer
July 12, 1993 with the Montana Department of Labor**

July 12, 1993 - Employee resigns from present employment.

July 30, 1993 - Charging party files her own complaint on a Department of Labor and Industry form. Charging party March 24, 1997 alleges in own hand writing, **harassment, no overtime pay and no vacation pay.**

August 11, 1993 - Department of Labor forwards claim and supporting documents to respondent. Included is the department's calculation of charging party's claimed wage violation in the amount of \$2,310.00.

August 19, 1993 - Employer's response to charging party's alleged wage violation claims.

August 24, 1993 - Department of Labor forwards employer's response to charges and asks for reply by August 31, 1993.

August 26, 1993 - Department of Labor granted charging party a requested time extension until September 9, 1993.

September 15, 1993 - Determination of Dismissal by the Department of Labor.

COMPLETION OF CASE:

48 days - 1 ½ months from the claim date to the completion. The \$2,310.00 claim was ruled against or in favor of the employer.

Employee SECOND complaint filed against employer January 7, 1994 with the Montana Human Rights Commission

January 7, 1994 - Complaint is filed by Montana Human Rights Commission and charging party.

The charges are: "differential treatment" and sex discrimination. The employer was given a paper called the "Guide for Respondents". This stresses mediation settlement. States commission staff "acts as an impartial investigator and mediator." (These terms are not compatible.)

January 14, 1994 - Employer is informed and given a copy of the formal complaint and instructed to respond within 30 days.

February 9, 1994 - Employer submits response to formal complaint and charges that the filing of the complaint is 3 days beyond the 180 days deadline mandated in law.

October 24, 1994 - (7 months after the employers 30 day response requirement) Charging party returned her answers to employers response to charges.

November 18, 1994 (8 months after employers response to charges) - The Human Rights Commission acknowledged employer's compliance to answering the charges. They stated that it would be 6 to 9 months before the case would be assigned to an investigator.

August 16, 1995 (9 months later total of 20 months from filed charges) - The Human Rights Commission telephones employers' office to inform him that an investigator had been assigned to the case. The MHRC investigator stated that the charging party had a long list of witnesses and if employer wanted to settle the complaint the employee would settle for \$12,000.00. MHRC investigator would not tell who the witnesses were. The MHRC had never requested any evidence or witnesses of employer in all this 20 months.

August 23, 1995 - MHRC Investigator writes employer's attorney and sends the charging party's rebuttal, dated October 24, 1994, to employer's answers of the charge of sex discrimination.

February 29, 1996 - The Montana Human Rights Commission **final investigative report** stated:

1. The MHRC lacked jurisdiction because complaint was not filed within 180 day time limit.
2. 5 witnesses for the charging party plus the charging party "failed to establish a prima facie case of unlawful discrimination."

COMPLETION OF CASE: 25 Months - 750 days - \$3,000.00 in attorney fees

Conclusion:

1. Continual and repeated discrimination against employer-both in response time requirements & evidence and witnesses.
2. Investigation had not started, yet extortion on behalf of employee, called mediation, was standard practice.
3. There was no due process for employer. The commission tried manipulating justice in favor of employee.

**SB 350 addresses all these issues and treats both sides fairly, with due process & justice-
Please pass SB 350 with the sponsors amendments.**

Dean M. Randash - NAPA Auto Parts - Helena, Montana 59601

MONTANA ADVOCACY PROGRAM, Inc.

Protection & Advocacy for Persons with DisABILITIES

Assistive Technology (AT)

Client Assistance Program (CAP)

Protection and Advocacy for Individuals with a Developmental Disability (PADD)

Protection and Advocacy for Individuals with a Mental Illness (PAIMI)

Protection and Advocacy of Individual Rights (PAIR)

316 N. Park, Room 211

P.O. Box 1680

Helena, Montana 59624

(406) 444-3889

(800) 245-4743 Voice/TDD

(406) 444-0261 FAX

March 24, 1997

EXHIBIT 7

DATE 3/25/97

SB 350

TO: House Business and Labor Committee
FROM: Al Smith, Executive Director
RE: SB 350



The Montana Advocacy Program (MAP) advocates for the rights of Montanans with disabilities. MAP refers persons to the Human Rights Commission (HRC) for investigation and resolution of claims of discrimination in housing, employment and accommodations. We also provide legal representation for clients who have claims before the HRC, and if resolution cannot be obtained there, MAP represents clients in the courts.

This legislation seeks to punish the HRC. Unfortunately, it isn't the citizen volunteers of the Commission itself or the educated and experienced staff of the HRC that suffer. The Commission can find other things to do with their time, and the staff can find other jobs. The citizens of this state who are subject to discrimination that are punished and suffer with the passage of this bill — the woman with a hearing impairment who is denied an opportunity to even interview for a job, a job for which hearing is not required; the heavy equipment operator with diabetes whose health is deteriorating and who is being forced from his job solely because his employer refuses to make a reasonable accommodation to his work schedule, an accommodation offered to other employees; the persons with a mental illness who are told not to come back to an entertainment establishment, not because they have caused any problems or bothered any other customers, but because the owner doesn't like the way they look, a "look" caused by the side effects of the medications they must take. The people punished by SB 350 are Montanans — women, children and persons with disabilities.

It has been MAP's experience that HRC has provided a low cost process to investigate allegations of discrimination, and, if those allegations are substantiated through investigation, HRC has provided a low cost process to resolve the claims. SB 350 will take the resolution of discrimination allegations out of an administrative process and into the courts.

MAP participated in the working group that considered amendments to this bill. That process had promise and constructive work was taking place, HOWEVER, THE PROCESS ENDED BEFORE ALL SERIOUS CONCERNS WERE RESOLVED. THE RESULTING PRODUCT IS NOT GOOD LEGISLATION. THE END RESULT WILL MEAN MORE CASES IN COURT, WITH A HIGHER COST TO SMALL BUSINESSES AND TO PERSONS ALLEGING DISCRIMINATION. THE ONLY WINNERS WILL BE THE LAWYERS, INCLUDING MAP, WHICH HAS SEVEN ATTORNEYS ON STAFF.

Missoula Office: 415 N. Higgins, Suite 2, Missoula, MT 59802; (406) 549-8464

Warm Springs Office: P.O. Box 177, Warm Springs, MT 59756; (406) 693-7035

E-Mail: advocate@lewis.MT.net

MONTANA WOMEN'S LOBBY

P . O . B O X 1 0 9 9 H E L E N A , M T 5 9 6 2 4 4 0 6 . 4 4 9 . 7 9 1 7

EXHIBIT 8
DATE 3/25/97
SB 350

To: House Business and Labor
From: Kate Cholewa, MT Women's Lobby
Re: SB 350, Opposed

We rise in opposition to SB 350. The Human Rights Commission deals with issues that extend beyond a set of individuals in the Flathead. Women are often at the receiving end of employment discrimination or sexual harassment issues. Families suffer housing discrimination. We don't want to see the ability of the HRC to deal with these issues diminished. We do believe that this bill does this, and we think it would be more honest to eliminate the HRC altogether than to leave it in existence, stripped of power, misrepresenting to the people of Montana that the state is committed to eliminating discrimination.

We also believe that it is important that the Commission be able to continue filing complaints even without a plaintiff. The mission of HRC is to advocate for non-discriminatory practices, and we believe that's what the Commission has done. The Commission has been accused of advocating for individuals, our impression is that those claims are made by people confusing advocating for non-discriminatory practices with advocating for individuals.

As this issue has moved through the legislature the issue has returned over and over again to the Flathead where unknowingly, people broke laws that it is the Commission's duty to enforce. We hope this legislature encourages the enforcement of all laws equally, and does not send the message to enforcement entities that they better find out who's in and whose out with the legislature before carrying out their duties.

or institution shall discriminate against any person in the exercise of his(er) civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." (Art. II, Sec. 4)

Title 49 of the Montana Code further guarantees basic personal and political rights, fair practices, and the rights of the persons who are differently abled. It denies discriminatory practices in housing, employment, public accommodations, education, finance and credit, state affairs, and pregnancy-related leaves.

We have a wide range of concerns in the protecting and strengthening of human rights for Montanans. We urge all communities of faith to be diligent in identifying discrimination and harassment in our government, communities and our own churches. We favor the identification and redress of failures to ensure full accessibility and availability to the protection of guaranteed human rights, including the recording of and reporting by law enforcement of instances of human rights violations or malicious harassment. We favor legal remedies for victims of attacks based on sexual orientation. We favor augmenting the Montana criminal code to more effectively address and prosecute crimes of malicious harassment and racial/religious violence. We favor development and implementation of programs of public education and training for action to eliminate discrimination of all forms in all areas of our life together.

MONTANA RELIGIOUS LEGISLATIVE COALITION
(MRLC)
P.O. BOX 745
HELENA, MONTANA 59624
(406) 442-5761

MONTANA ASSOCIATION OF CHURCHES
POSITION PAPERS

- AGRICULTURE - LAND & FARM CRISIS
- CAPITAL PUNISHMENT
- CHILDREN IN SOCIETY
- CORPORATE & GOVERNMENTAL RESPONSIBILITY IN MATTERS OF PLANT CLOSURES & /OR LAYOFFS
- CORRECTIONS
- ENERGY & ENVIRONMENT
- EQUAL RIGHTS FOR WOMEN
- FAITH vs. TIME - Release time for religious education
- FUNDING FOR CONCILIATION COURTS
- GAMBLING
- HEALTH CARE FOR SENIOR CITIZENS
- HEALTH CARE SYSTEM REFORM
- HIV/AIDS
- HOME HEALTH CARE
- HUMAN RIGHTS
- HUMAN WELFARE AND FINANCIAL SUPPORT
- MRLC - HISTORY, PROCESS & RATIONALE
- PORNOGRAPHY
- PRE-MARITAL COUNSELING FOR MINORS
- PUBLIC FUNDING OF THE ARTS
- STRENGTHENING FAMILIES
- TAX EXEMPTION
- TAX REFORM
- TRAFFIC SAFETY
- VICTIMS OF CRIME

MEMBER UNITS OF THE
MONTANA ASSOCIATION OF CHURCHES

American Baptist Churches of the Northwest
Christian Church (Disciples of Christ) of Montana
Episcopal Church, Diocese of Montana
Evangelical Lutheran Church in America -
(Montana Synod)
Presbyterian Church (USA) -
Glacier Presbytery
Yellowstone Presbytery
Roman Catholic Church -
Diocese of Great Falls / Billings
Diocese of Helena
United Church of Christ -
Montana-Northern Wyoming Conference
United Methodist Church -
Yellowstone Conference

MONTANA
ASSOCIATION OF CHURCHES

POSITION PAPER ON

EXHIBIT 9
DATE 3/25/97
SB 350



Montana Association of Churches
100 - 24th Street W., Suite G
Billings, Montana 59102
(406) 656-9779

Adopted 1989 - Revised 1994

Human Rights Position Paper

The Montana Association of Churches supports:

1. Laws in society that:

- ~ recognize that all persons are created in the image of God,
- ~ promote the opportunity for every person to live in the light of God's compassionate justice; and,
- ~ challenge whatever dehumanizes people.

2. The full enforcement and strengthening of the guarantees of human rights to the people of Montana found in the U.S. Constitution and the Montana Constitution, especially those rights outlined in the Montana Constitution Article II (Declaration of Rights) and Title 49 MCA (Human Rights).

3. A strong, independent and fully-funded State Human Rights Commission empowered to:

- ~ provide an on-going assessment of the people's realization of these rights;
- ~ identify contemporary manifestations of discrimination or denial of these rights; and,
- ~ implement programs, policies and statutes that address discrimination, harassment or denial of rights in overt, clandestine or insidious policies or practices.

Supporting Statement

Our Theological Understanding

The Montana Association of Churches speaks from a Judeo-Christian ethic which holds that all persons are of unique and special worth, created by God to live in justice and freedom. We seek equal protection and honor of human dignity through human rights legislation, by which we promote the Biblical mandate to live in just relationships in a caring human community that affirms each person's human dignity.

Because we recognize that the securing of equal protection and advocacy of all is an unfinished task, we must continually seek to identify forces, practices, policies and groups that diminish the worth of persons or groups and devalue life by denying basic human rights.

Contemporary Concerns (that call for a faith response)

Some contemporary trends are alarming:

- ~ the growing "underclass" of persons in society who are excluded from full participation in society due to educational, cultural, economic, physical/mental status, lifestyles, religious or political circumstances;

~ the activities of neo-fascist and white supremacist groups which prey on persons who are victims of economic and social crises such as farm and rural crises;

~ the rise of malicious and violent harassment in this region of our country;

~ acts of discrimination and prejudice against ethnic and racial minorities in every area of life; and,

~ discrimination and prejudice against persons based on age, economic class, religion, gender, sexual orientation and differing physical and mental abilities, in the areas of housing, employment, financing and credit, education and public accommodation.

Our Response

The Montana Constitution safeguards one of the strongest declarations of human rights in this nation, including:

"All persons are born free and have certain inalienable rights.... to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways...." (Art. II, Sec. 3)

"The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation,

EXHIBIT 10
DATE 3/25/97
SB 350

INDEX

- A. TESTIMONY OF MONTANA SULPHUR & CHEMICAL COMPANY ON
SENATE BILL 350 BEFORE THE BUSINESS AND LABOR COMMITTEE ON
MARCH 25, 1997.
- B. PERTINENT SECTIONS OF THE MONTANA CONSTITUTION AND THE
MONTANA CODE ANNOTATED RELATING TO HUMAN RIGHTS.
- C. LETTERS AND INFORMATIONAL HANDOUTS CURRENTLY USED BY THE
HUMAN RIGHTS COMMISSION.
- D. SUMMARY OF AND INFORMATION ABOUT SELECTED HUMAN RIGHTS
CASES.
- E. MEMORANDUM FROM THE U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT REGARDING SUBSTANTIAL EQUIVALENCY.

Exhibit # 10 Sb 350
3 Ring Binder

The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

Cause of Action

The court rejected defendants' contention that plaintiff failed to assert a cause of action under 42 U.S.C. Sections 1981 and 1982. The court explained that, to withstand a motion to dismiss, the complaint must allege that defendants denied ACORN the same right to lease and own property as is enjoyed by white citizens. The court held that the complaint met this threshold. The court also emphasized that fair housing groups, such as ACORN, have standing to bring Section 1981 and 1982 claims as long as they demonstrate that their time and money was deflected from counseling to "legal efforts against discrimination."

The court did agree with defendants that the Thirteenth Amendment does not give rise to a private right of action and dismissed this claim.

The defendants also challenged whether a timeshare is a dwelling and subject to the prohibitions in the Fair Housing Act. Relying on HUD interpretations, the court held that, unlike a motel which is a "place of temporary sojourn or transient visit," a timeshare is a dwelling because each resident owns a right to return to his unit. Because timeshares involve the ownership of a housing right, the court held that they fall within the ambit of the Fair Housing Act.

FAIR HOUSING**Organization Lacks Standing to Challenge Newspaper Advertising**

In the absence of a perceptible injury, a fair housing organization had no standing to bring an action against a newspaper for allegedly discriminatory real estate advertisements, concluded the U.S. District Court for the Eastern District of Pennsylvania. (*The Fair Housing Council of Suburban Philadelphia v. Main Line Times and Acme Newspapers, Inc.*, Civil Action No. 96-1379, 1997 U.S. Dist. LEXIS 596, January 27, 1997)

The Fair Housing Council of Suburban Philadelphia brought an action under the Fair Housing Act (act) against the Main Line Times for alleged injuries it suffered as a result of discriminatory real estate advertisements published in the newspaper, including phrases such as "no children," "ideal for couple or professional single," and "for one person." The council asserted that these phrases indicated discrimination based on familial status.

A jury returned a verdict in favor of the council and awarded compensatory damages of \$25,000. The newspaper appealed.

Jurisdictional Question

Although the lower court did not address the issue of standing, the court said that it must consider its jurisdiction in the case.

Citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), the council said it had organizational standing to sue as long as it could show injury "by demonstrating that defendants' conduct caused the organization to divert its resources to combat the discrimination or caused the mission of the fair housing group to be frustrated."

The court held that mere diversion of resources was not enough to confer standing. Also citing the Supreme Court in

Havens, the court said that a housing organization had to show that it "suffered impairment in its role of facilitating open housing before it would be entitled to judicial relief."

Although the council alleged that families with children were barred from housing based on the quoted advertisements, the council also admitted that no individual or family with children ever complained to the council about the advertisements. The court concluded that the council did not provide evidence that the newspaper's real estate ads "perceptibly impaired" its programs, and, therefore, it had no standing to sue.

In addition, even if the council did suffer some injury, the court said it failed to allege a causal connection between its injury and the advertisements in the newspaper. On this additional basis, the council lacked standing to sue.

Since the council did not have standing to sue, the court ruled the case was prematurely submitted to the jury and granted defendant's motion for judgment as a matter of law.

CD BLOCK GRANTS**Enforceability of Section 108 Loan Agreement Depends on Whether City Waived Cancellation Right**

The enforceability of a restructuring agreement for a Section 108 community development block grant loan could not be decided by summary judgment prior to a determination of whether the city of Binghamton, a party to the agreement, waived its right to cancel the agreement, held the New York Supreme Court, Appellate Division, Third Department. (*Sarbro VII v. City of Binghamton*, 77308, 1997 N.Y. App. Div. LEXIS 967, February 6, 1997)

Plaintiff Sarbro VII agreed to build a hotel and conference center on land owned by defendant, the city of Binghamton, and financed by a HUD-guaranteed Section 108 loan. Sarbro and the city also entered into a 10-year lease agreement. Under the Section 108 program, the city would borrow the money and then lend it to Sarbro. Sarbro's "rent" to the city included the loan repayment. Due to Sarbro's difficulty in fulfilling its financial obligations, the city notified Sarbro that HUD was willing to allow refinancing and extension of the amortization of the Section 108 loan.

The city and Sarbro entered into an amended agreement detailing the loan modification, which was explicitly subject to HUD's approval. Although the city submitted a loan restructuring application reflecting the amended agreement and HUD approved the application, the new promissory notes HUD sent for signature varied significantly from the terms agreed to and applied for.

Not realizing the discrepancies between the HUD documents and the amended agreement, the city signed the notes and returned them to HUD, sending a new lease to Sarbro incorporating the new, but unacceptable HUD terms. When Sarbro alerted the city to the problems with the HUD documents, the city asked HUD to issue documents consistent with the amended agreement and also asked Sarbro to increase its Section 108 rent payments. Neither action was successful.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE

2/25/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		

**HOUSE OF REPRESENTATIVES
VISITORS REGISTER**

SUB-COMMITTEE

DATE

BILL NO. SB 350

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Riley Johnson	NFIB	X	
Moe Wosepka	Kalspell Chamber of Commerce	X	
DON CHANCE	MT. BUILDING IND. ASSOC	✓	
BETTY WADDEN	MT ASSOC. OF CHURCHES		X
Al Smith	Montana Advocacy		X
Sharon Hoff	MT Catholic Conference		X
Judy Ober	Diocese of Helena		X
Don Allen	MT. Wood Products Assoc	X	
MIKE M Eloy	SELF		X
Pat Haffey	DLI	X	
Don Smith	Rep - HD 66		X
Mary McWood	MT. SULPHUR		X
Brian Garrity	self		X
Ric Moser	Self		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITORS REGISTER**

SUB-COMMITTEE

DATE

BILL NO. SB 350

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Riley Johnson	NFIB	X	
Moe Wosepka	Kalispell Chamber of Commerce	X	
DON CHANCE	MT. BUILDING IND. ASSN.	✓	
BETTY WADDELL	MT ASSOC. OF CHURCHES		X
Al Smith	Montana Advocacy		X
Sharon Hoff	MT Catholic Conference		X
Judy Ober	Diocese of Helena		X
Don Allen	MT. Wood Products Assn.	X	
MIKE M ELOY	SELF		X
Pat Haffey	DLI	X	
Don Sudds	Rep - HD 66		X
Mary McNeely	MT. SULPHUR		X
Brian Garrity	self		X
Ric Moser	Self		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITORS REGISTER**

SUB-COMMITTEE

DATE _____

BILL NO.

SPONSOR (S)

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 28, 1997, at
8:00 AM, in Room 104

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 238; SB 266; SB 286
(3/5/97)

Executive Action: SB 290; SB 379; SB 266; SB
286: SB 238; SB 368; SB 350

HEARING ON SB 286

Opening Statement by Sponsor: Senator Crippen, S. D. 10
introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: .01; Comments: None.}

Motion/Vote: Rep. Prouse moves to segregate #4 part 1. Vote on amendments without 2 and 3 carried 10-9.

{Tape: 2; Side: 2; Approx. Time Count: 24.0; Comments: None.}

Motion/Vote Rep. Sliter moved to table amendments 2 and 3. Motion carried 10-9.

{Tape: 2; Side: 2; Approx. Time Count: 25.5; Comments: None.}

Motion/Vote Rep. Pavlovich moved to adopt Pavlovich amendments. Motion carried 16-1. roll call.

{Tape: 2; Side: 2; Approx. Time Count: 27.8; Comments: None.}

Motion/Vote Rep. Pavlovich moved do concur as amended. Motion carried 18-1. Rep. Prouse voted no.

{Tape: 3; Side: 1; Approx. Time Count: .6; Comments: None.}

EXECUTIVE ACTION ON SB 350

Motion: Rep. Sliter moves do concur SB 350.

{Tape: 3; Side: 1; Approx. Time Count: 1.6; Comments: None.}

Motion Rep. Sliter moved to adopt Sliter amendments. EXHIBIT 8.

{Tape: 3; Side: 1; Approx. Time Count: 2.0; Comments: None.}

Motion/Vote Rep. Pavlovich moved to table SB 350. Motion failed 8-11. roll call vote.

Tape: 3; Side: 1; Approx. Time Count: 3/8; Comments: None.}

Discussion: {Tape: 3; Side: 1; Approx. Time Count: 5.8; Comments: None.}

Vote Vote on Sliter amendments carried 12-7 roll call vote.

Tape: 3; Side: 1; Approx. Time Count: 15.; Comments: None.}

Motion/Vote: Rep. Lawson moved to adopt Lawson amendments. EXHIBITS 9 AND 10.

{Tape: 3; Side: 1; Approx. Time Count: 15.4; Comments: None.}

Motion: Rep. Ewer moved to adopt Ewer amendments. Ewer withdrew motion.

{Tape: 4; Side: 1; Approx. Time Count: 9.0; Comments: None.}

Motion: Rep. Tuss moved to eliminate Human Rights Commission. Motion defeated 2-17. Roll call vote.

{Tape: 4; Side: 1; Approx. Time Count: 9.2; Comments: None.}

Motion/Vote: Rep. Sliter moved do concur as amended. Motion carried 12-7. Roll call vote.

{Tape: 4; Side: 1; Approx. Time Count: 19.6; Comments: None.}

Motion/Vote: Rep. Gillan moved Simon Letter on Oversight Committee. Motion carried unanimously.

{Tape: 4; Side: 1; Approx. Time Count: 23.5; Comments: None.}

Summary of Amendments to Senate Bill No. 350
Third Reading Copy

Submitted to Representative Simon
Prepared by Terry Spear, for the Montana Human Rights Commission
March 28, 1997

168 amendments are currently proposed to SB350.¹ The amendments can be considered by content, rather than individually or en masse. Many amendments simply clarify or simplify the enactment without changing its meaning. Some more significant amendments involve the following issues:

1. Should the Commission still be the hearing body rather than the Department of Labor?
2. Should the Department of Labor be able to file complaints?
3. Should respondents be subjected to multiple investigations (state and federal) because HUD equivalency is lost?
4. Will a July 1, 1997 effective date create administrative problems and delays?
5. Are the timelines and deadlines under SB350 now workable?
6. Are publishers of advertising still accorded special treatment for illegal discrimination?

Amendments on each of the 8 subjects are identified separately. Amendments offered by the original proponents of SB350 appear in Greg Petesch's 110 amendments ("Amendments to Senate Bill No. 350, Third Reading Copy, Requested by Senator McNutt, Prepared by Greg Petesch, March 27, 1997"), identified here as "Proponents' amendments." Amendments offered by the Department of Labor and Industry appear as 14 proposed amendments on a 2 page summary unidentified by source or author, identified here as "DOLI amendments." The Human Rights Commission's amendments appear in Anne MacIntyre's March 27, 1997, list of 44 proposed amendments, identified here as "HRC amendments."

¹ As of 5:00 p.m. Thursday, there were 110 amendments to S.B. 350 being submitted by its proponents. There are 14 amendments to S.B. 350 being proposed by the Department of Labor and Industry (to whom the investigation and enforcement functions of the current Human Rights Commission staff are being transferred under S.B. 350). There are 44 amendments to S.B. 350 being proposed by the Human Rights Commission (which supports S.B. 350 if these amendments are made).

1. Should the Commission still be the hearing body rather than the Department of Labor?

One of the express purposes of SB350 is to separate the adjudicatory functions of the Human Rights Commission (which stay with the Commission itself) from the investigatory functions of the HRC staff (which are transferred to DOLI, under the Labor Commissioner's supervision). The existing bill, with or without its proponents' amendments, puts hearings in DOLI rather than in the Human Rights Commission. This is both inconsistent with the original stated purpose and unwieldy procedurally. Most DOLI contested case hearings are not governed by the full range of the Rules of Evidence and Civil Procedure. Most DOLI hearing examiners are not attorneys. Treating Human Rights Act contested cases in the same fashion as, for example, unemployment benefit contested cases, threatens the integrity of the Commission's hearing process. The Commission amendments retain hearings with the Commission, achieving the complete separation of investigative and adjudicative functions, and preserving the full panoply of due process rights for the parties.

FOR the Human Rights Commission as the hearing body:

HRC amendments 7, 8, 12 and parts of 43 (the references in the new sections to the "commission finds" and "commission may" which identify the commission as the adjudicative body)

AGAINST Commission as the hearing body:

SB350 third reading, or with the proponents' amendments (such as *Proponents' amendment 46*, for stipulated telephonic hearings)

2. Should the Department of Labor be able to file complaints?

HUD equivalency requires that the investigatory body be an enforcement agency, and enforcement agencies typically have such authority. In addition, removing this power protects illegal conduct--wrongdoers are exempt from enforcement unless and until a person directly harmed by their wrongdoing files a complaint.

FOR DOLI filing complaints:

Proponents' amendments, 46 and 105 (new section 17)

3. Should respondents be subjected to multiple investigations (state and federal) because HUD equivalency is lost?

If the Montana Act offers less protection to the victims of housing discrimination than and does not have comparable procedures as the federal Fair Housing Act, the state will not be certified as a referral agency. HUD investigations of federal housing discrimination complaints will not be contracted to the Department. Respondents to HUD complaints in Montana will be subject to federal investigation and litigation. Where both an HUD and an HRA complaint are filed on the same facts, the respondent will face two separate proceedings on the same occurrence. Without amendment, SB350 raises real risks of such multiple proceedings.

A. SB350 (section 5) presently provides preferential treatment of publishers of discriminatory housing ads. which eliminates substantial equivalency. Publishers will, as a practical matter, be virtually immune under the Human Rights Act from liability for publishing discriminatory ads. Publishers under federal law are not immune, but are treated just like everyone else. At least advertising complaints will be subject to dual investigations if this remains. At worst, the state loses all substantial equivalency, and all housing complaints involve potential double investigations. **See No. 6, below, for amendments addressing advertising.**

B. Proponents of SB350 seek to add new definitions to the Human Rights Act: "aggrieved party" and "organization." The new definitions have no direct parallel in federal or state law. How the terms will be construed by the courts is unpredictable, but the intent of the definitions appears to be to cut down the classes of people protected by the law. The state can lose substantial equivalency as a result. Uncertainty about the meanings of the new definitions can also lead to more litigation and expense to respondents and charging parties, in obtaining court rulings on these definitions.

AGAINST the new definitions:

Reject Portions Proponents' Amendment 18

C. Proponents of SB350 want to amend their bill to provide that complaints can only be filed on behalf of an aggrieved party by their duly authorized representatives. If (as appears intended) this eliminates the right to bring a class action in conformance with the Rules of Civil Procedure, it conflicts with other express requirements of the bill that insist upon reliance upon the Rules of Civil Procedure. Also, elimination of class remedies would be contrary to several provisions in the federal fair housing laws threatening substantial equivalence.

AGAINST the new restriction:

Reject Proponents' Amendment 28

D. Both SB350 and its proponents' most recent amendments reduce the one year time limit for filing a housing claim, to anywhere from a month to 180 days (under various versions of the bill). HUD regulations may allow a 180 day limit, BUT if a state complaint is filed within 180 days, but an HUD complaint is then filed on the 185th day after the alleged discrimination, the charging party has effectively forced the respondent to respond to two separate investigations--one state and one federal. With any shorter statute of limitations under the Human Rights Act, complainants can choose to subject respondents to dual investigations.

FOR keeping the 1 year statute of limitations that currently exists:

HRC amendment 14.

AGAINST keeping the 1 year statute--cutting it down to 90 days:

SB350, third reading.

AGAINST keeping the 1 year statute--cutting it down to 180 days:

Proponents' amendment 80.

E. Federal fair housing acts require that investigations conclude within 100 days. Proponents of SB350 proposed a shorter time originally, but now offer an amendment imposing a 120 day time limit for concluding investigations of housing discrimination. This approach again puts the state fair housing laws at odds with the federal law which requires a conclusion in 100 days.

FOR keeping state law consistent with federal law (100 days under both):
HRC amendment 15.

AGAINST changing state law to conflict with federal law (120 versus 100 days):
Reject Proponents' amendment 39.

F. SB350 uses "preponderance of the evidence" rather than "reasonable cause" to describe the burden of proof on the aggrieved party during the investigation. State and federal law require a preponderance of the evidence at trial or at a hearing. If the differences in the investigation burden deny complainants the same chance accorded under federal law to go to a hearing or trial, then the laws are not substantially equivalent. A state complaint might then be found without merit, but a federal investigation might continue, and two law suits, one in state court and the other in federal court, could follow. This would cause greater delay and greater expense for all parties.

FOR keeping a burden of proof consistent with federal fair housing law:
HRC amendment 13.

AGAINST keeping a burden of proof consistent with federal fair housing law.
Proponents' amendment 87.

G. SB350 was amended to require the Commissioner to file in an HUD case also involving a state complaint found to have merit. The proponents now propose that the Commissioner of DOLI may, but not must, file a civil action if the investigation of such a complaint determines that it has merit. This change causes state fair housing law to conflict directly with federal law.

FOR maintaining substantial equivalency:
HRC amendment 26.

AGAINST maintaining substantial equivalency:
Proponents' amendment 86 and 105.

H. Elimination of punitive damage awards from district court actions, introduction of punitive damage standards for civil penalties and "substantively" prevailing party language added to the attorney fees provisions all threaten substantial equivalency.

FOR maintaining substantial equivalency:
HRC amendment 43.

AGAINST maintaining substantial equivalency:
SB350 section 13.

4. Will a July 1, 1997 effective date create serious administrative problems and delays?

Under the proponents' amendments, budget changes, the transfer of the staff to the Department, and the substantive and procedural changes in the Act all occur simultaneously with a July 1, 1997 effective date. SB350 will require changes in administrative procedures and rules, for both the Human Rights Commission and the Department of Labor and Industry. Making these changes while the commencement of the new fiscal year is likely to cause considerable delay and uncertainty, for parties and staff. In addition, the Commission has contracts with federal agencies which are on a federal fiscal year basis. This confusion can be alleviated, and delay reduced, if the statutory changes of SB350 are deferred to October 1, 1997. If no amendments to the effective date are approved, the substantive changes and staff transfer are effective immediately, even before the budget changes, an even less feasible alternative.

FOR an October 1, 1997, effective date:
HRC amendment 44.

FOR a July 1, 1997, effective date:
Proponents' amendment 110.

FOR an immediate effective date upon passage:
SB350, section 17.

5. Are the timelines and deadlines under SB350 now workable?

Because of the very technical nature of SB350, and the multiple amendments repeatedly drafted to SB350, developing a "clean" timeline of the applicable deadlines, to assure that the procedural revisions will actually work, is very difficult. Without a "gray bill," it is all but impossible to track the various deadlines, and the interaction between such deadlines, under various amendments. The Commission, its hearing examiners (past and present), its head investigator and its administrator are the most experienced in applying time-lines under the Act. They endorse the proposals of the Commission for time-lines and deadlines.

FOR Commission proposals regarding time-lines:
HRC amendments 5, 6, 7, 13, 14, 15 and 43.

AGAINST the Commission's time-line:
Proponents' amendments 34-60, 80.

6. Are publishers of advertising still accorded special treatment for illegal discrimination?

SB350 as introduced requires a heightened standard for publishers to be liable for discriminatory ads. This conflicts with federal law and will be confusing to those charged with compliance with the law, as well as affecting HUD equivalency .

FOR maintaining Fair Housing Act equivalency on advertising:
HRC amendments 3 and a portion of 44.

AGAINST maintaining Fair Housing Act equivalency on advertising
SB350, third reading, sections 5 and 16.

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 3/28/97 BILL NO. 350 NUMBER MOTION: Paul Simon to Table #3508-11

NAME	AYE	NO
Bruce Simon, Chairman		X
Paul Sliter, Vice Chairman		X
Bob Pavlovich, Vice Chairman	X	
Joe Barnett		X
Rod Bitney		X
Sylvia Bookout		X
Charles Devaney		X
David Ewer	X	
Kim Gillan	X	
Billie Krenzler	X	
Bob Lawson	X	
Rod Marshall		X
Gay Ann Masolo		X
Wes Prouse		X
Carolyn Squires	X	
Jay Stovall		X
Cliff Trexler		X
Joe Troplia	X	
Carley Tuss	X	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 3/28/97 BILL NO. 350 NUMBER _____MOTION: Sliter moves to amend as
amended

12-7

NAME	AYE	NO
Bruce Simon, Chairman	X	
Paul Sliter, Vice Chairman	X	
Bob Pavlovich, Vice Chairman		X
Joe Barnett	X	
Rod Bitney	X	
Sylvia Bookout	X	
Charles Devaney	X	
David Ewer		X
Kim Gillan		X
Billie Krenzler		X
Bob Lawson	X	
Rod Marshall	X	
Gay Ann Masolo	X	
Wes Prouse	X	
Carolyn Squires		X
Jay Stovall	X	
Cliff Trexler	X	
Joe Troplia		X
Carley Tuss		X

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 2/28/97 BILL NO. 350 NUMBER _____MOTION: Issue names to absolute to
Union Letter Commission Motion of issue
2-17

NAME	AYE	NO
Bruce Simon, Chairman		X
Paul Sliter, Vice Chairman		X
Bob Pavlovich, Vice Chairman	X	
Joe Barnett		X
Rod Bitney		X
Sylvia Bookout		X
Charles Devaney		X
David Ewer		X
Kim Gillan		X
Billie Krenzler		X
Bob Lawson		X
Rod Marshall		X
Gay Ann Masolo		X
Wes Prouse		X
Carolyn Squires		X
Jay Stovall		X
Cliff Trexler		X
Joe Troplia		X
Carley Tuss	X	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 3/28/97 BILL NO. 350 NUMBER _____MOTION: Spencer Amendment8-11

NAME	AYE	NO
Bruce Simon, Chairman		X
Paul Sliter, Vice Chairman		X
Bob Pavlovich, Vice Chairman	X	
Joe Barnett		X
Rod Bitney		X
Sylvia Bookout		X
Charles Devaney		X
David Ewer	X	
Kim Gillan	X	
Billie Krenzler	X	
Bob Lawson	X	
Rod Marshall		X
Gay Ann Masolo		X
Wes Prouse		X
Carolyn Squires	X	
Jay Stovall		X
Cliff Trexler		X
Joe Troplia	X	
Carley Tuss	X	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 3/28/97 BILL NO. 350 NUMBER _____MOTION: State amendments #1 thru 108

12-7

NAME	AYE	NO
Bruce Simon, Chairman	X	
Paul Sliter, Vice Chairman	X	
Bob Pavlovich, Vice Chairman		X
Joe Barnett	X	
Rod Bitney	X	
Sylvia Bookout	X	
Charles Devaney	X	
David Ewer		X
Kim Gillan		X
Billie Krenzler		X
Bob Lawson	X	
Rod Marshall	X	
Gay Ann Masolo	X	
Wes Prouse	X	
Carolyn Squires		X
Jay Stovall	X	
Cliff Trexler	X	
Joe Troplia		X
Carley Tuss		X



HOUSE STANDING COMMITTEE REPORT

April 2, 1997

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Mr. Speaker: We, the committee on Business and Labor report that Senate Bill 350 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Sliter

1. Title, line 6.

Following: ";

Insert: "TRANSFERRING THE STAFF OF THE COMMISSION TO THE
DEPARTMENT OF LABOR AND INDUSTRY;"

2. Title, line 7.

Strike: "COMMISSION STAFF"

Insert: "DEPARTMENT"

3. Title, line 8.

Strike: "COMMISSION TO ADOPT"

Insert: "ADOPTION OF"

4. Title, line 10.

Strike: "ITS"

5. Title, line 13.

Strike: "COMMISSION"

Insert: "COMMISSIONER"

Strike: "NOT"

6. Title, lines 14 and 15.

Strike: "COMMISSION STAFF" on line 14

Insert: "THE DEPARTMENT"

Following: "WITHIN" on line 14

Strike: remainder of line 14 through "DAY" on line 15

Insert: "10 BUSINESS DAYS"

Strike: "COMMISSION"

Committee Vote:

Yes 12, No 7.

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(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state ~~and are manufactured only for export from the state.~~

(b) A person may not manufacture an illegal gambling device ~~for export from the state~~ without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

~~(c)~~ (4)(a) A person licensed under subsection (3) may conduct only those activities authorized under this subsection (4).

(b) A licensee may bring an illegal gambling device, including an illegal video gambling machine, into the state if:

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and received authorization from the department to bring the illegal gambling device into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(c) A licensee may also bring an illegal video gambling machine into the state if:

(i) the illegal video gambling machine will be reconditioned, refurbished, repaired, or otherwise substantially modified for conversion to an authorized video gambling machine; and

(ii) the licensee has notified the department and has received authorization from the department to bring the illegal video gambling machine into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

~~(4)(5)~~ An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity."

Section 2. Section 23-5-612, MCA, is amended to read:
"23-5-612. Machine permits -- fee. (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of \$200 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of \$25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall ~~retain deposit~~ 50% of the total permit fee collected under subsection (2) (a) and 100% of the machine transfer processing fee collected under subsection (2) (b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2) (a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury."
Renumber: subsequent sections

1. Page 3, line 21.

Insert: "**NEW SECTION.** **Section 5. Allocation of machine permit fees.** There is allocated \$300,000 from the state special revenue fund from the fees collected pursuant to 23-5-612 for purposes of the pathological gambling treatment and problem gambling prevention program provided for in Senate Bill No. 208."

Renumber: subsequent section

2. Page 3, line 24.

Strike: "**DATE.**" through "1997."

Insert: "**dates.** (1) [Section 1 and this section] are effective on passage and approval.

(2) [Sections 2 through 5] are effective July 1, 1997."

-END-

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